

REQUEST FOR PROPOSAL



**Howard County, Maryland
OFFICE OF PURCHASING
6751 Columbia Gateway Drive, Suite 501
Columbia, MD 21046**

ALPHA RIDGE LANDFILL WASTE HEAT RECOVERY SYSTEM

RFP NUMBER: 10-2011

Opening: JANUARY 5, 2011 AT 11:00 AM

PRE-PROPOSAL CONFERENCE: DECEMBER 2, 2010 AT 10:00 AM

Gary Sightler, Senior Buyer
(410) 313-6384

gsightler@howardcountymd.gov



MINORITY BUSINESS ENTERPRISES

YOU ARE ENCOURAGED TO RESPOND TO THIS SOLICITATION. DO NOT BE RELUCTANT TO ASK QUESTIONS IF CLARIFICATIONS OR EXPLANATIONS ARE REQUIRED. PLEASE CONTACT JACKIE DONALDSON-GREY, EQUAL BUSINESS OPPORTUNITY COORDINATOR, AT 410-313-3694 FOR MORE INFORMATION.

IMPORTANT NOTICE

Addenda to solicitations often occur prior to proposal opening (sometimes within as little as 48 hours). It is the potential Contractor's responsibility to frequently visit the Office of Purchasing web site (www.howardcountymd.gov/purchasing) to obtain Addenda.

Available Formal RFPs and RFP Results, 7 Days A Week, 24 Hours A Day, On The Website at
www.howardcountymd.gov/purchasing

TABLE OF CONTENTS

DOCUMENT A – TERMS AND CONDITIONS APPLYING TO PURCHASE ORDERS

DOCUMENT B – GENERAL CONDITIONS

1	Instructions, Forms, and Specifications
2	Bid Deposit
3	Reservations
4	Delivery
5	Competition
6	Protest
7	Disputes
8	Authority
9	Exceptions
10	Cash Discounts
11	Unit Prices
12	Non-Waiver
13	Patents
14	Governing Law
15	Compliance with Laws
16	Hold Harmless/Indemnification
17	Termination
18	Availability of Funds
19	Integration
20	Non-Assignment of Contract
21	Agreement
22	Affidavit
23	Equal Business Opportunity Participation
24	Public Information/Proprietary/Confidential Information
25	Cooperative Purchase
26	Environmentally Preferable Products

DOCUMENT C – SPECIFICATIONS

1	Background
2	Scope
3	Bid Deposit
4	Performance and Payment Bonds
5	Pre-Proposal Conference
6	Questions and Inquiries
7	Estimated Project Value
8	Contractor's Qualifications
9	Contractor's Requirements
10	Submission of Proposal Documents
11	Evaluation Offers
12	Billing and Payment
13	Insurance Requirements
14	Wage Requirements

Exhibit I-A - Howard County Code, Sec. 4.122A, Wage Requirements

Exhibit II-B – Howard County Charter and Code References to Ethics

DOCUMENT D – TECHNICAL PROPOSAL SIGNATURE COVER PAGE
PRICE PROPOSAL COVER PAGE
CONTRACTOR'S QUALIFICATION INFORMATION

DOCUMENT E – AFFIDAVIT

DOCUMENT F – EQUAL BUSINESS OPPORTUNITY CERTIFICATE

DOCUMENT G – WAGE RATE REQUIREMENT FOR SERVICES CONTRACTS FORM,
PARTS 1 AND 2.

DOCUMENT H – DESIGN AND CONSTRUCTION AGREEMENT

DOCUMENT H – EXHIBITS: (These Documents Must Be Downloaded Separately)

Exhibit A	Scope of Work and Specifications
Exhibit B	Landfill, Project Site and Collection and Recovery System
Exhibit C	Project Permits and Application
Exhibit D	Performance Test Procedures
Exhibit E	Progress Schedule
Exhibit F	Progress Payment Schedule
Exhibit G	Performance Guarantees
Exhibit H	Form of Performance Bond
Exhibit I	Invoice Form
Exhibit J	Form of Payment Bond
Exhibit K	Requirements of Mechanical Completion
Exhibit L	Operation and Maintenance Manual Requirements
Exhibit M	Detailed Plans
Exhibit N	County Rules
Exhibit O	Contractor Provided Insurance
Exhibit P	Subrecipient and Subcontractor Flowdown Requirements
Exhibit Q	Closeout Documents (Certificate of Substantial Completion, General Release, and Contractor's Affidavit)

DOCUMENT H – ATTACHMENTS: (The Attachments Must Be Downloaded Separately)

Attachment I	Sheets 11, 22, 23, 24, 25, 26, 29 and 32 of 32 by Harrington, Lacey and Associates, March 1979
Attachment II	Sheets 1-15 of 15 by Acer Engineers and Consultants, June 1994
Attachment III	Sheets 6, 8, and 22 of 25 by EA Engineering, June 1990
Attachment IV	Jenbacher J320 Technical Description
Attachment V	NEPA Documentation and Approval

IMPORTANT: ADVISE THE OFFICE OF PURCHASING IMMEDIATELY IF
ANY OF THE ABOVE DOCUMENTS ARE NOT ENCLOSED.

DOCUMENT A

TERMS AND CONDITIONS APPLYING TO PURCHASE ORDERS

- 1 No purchase of materials, supplies, equipment, and/or services will be recognized unless made through the Office of Purchasing.
- 2 The County may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice or course of dealing to the contrary.
- 3 The terms and conditions of sale as stated in this order govern in the event of conflict with any terms of seller's proposal, and are not subject to change by reason of any written or verbal statements by seller or by any terms stated in seller's acknowledgement, unless accepted in writing by the County.
- 4 If price is omitted on order, except where order is given in acceptance of quoted prices, it is agreed that seller's price will be the lowest prevailing market price and in no event is this order to be filled at higher prices than last previously quoted or charged without the County's written consent.
- 5 When requested, seller will acknowledge order promptly and state when delivery will be made.
- 6 Invoices must show point of delivery and purchase order number, and indicate if partial or complete billing. Separate invoices must be rendered for each purchase order.
- 7 The County has the right to refuse to make payment on any invoice unless and until presented by seller with the receipt, signed by the County, covering the invoiced material. The County's payment for any material shall not constitute acceptance of the material or a waiver of any of the County's rights hereunder.
- 8 No freight or delivery charges will be paid by the County unless specifically provided in the purchase order.
- 9 The County will not pay for packaging, boxing or cartage. Damage resulting from improperly package material will be charged to the seller.
- 10 Time is of the essence on this order. The County reserves the right to cancel this order or, any part thereof, without obligation, if delivery is not made or services completed at time(s) specified.
- 11 This contract shall be governed and construed in accordance with the law of the State of Maryland.
- 12 All deliveries and services furnished under this Purchase Order must be of the quality specified or in the event no quality is specified, must be the best of their respective kinds, and will be subject to inspection and approval of the County within a reasonable time after delivery of goods or completion of services. When manufacturing specifications are referred to in this Purchase Order, such specifications shall be deemed to be an integral part hereof as if duly set out herein. Goods and services shall be replaced at no additional charge to the County if they prove to be defective and/or not in accordance with specifications. Rejected materials shall be returned at the risk and expense of the seller. If the County does not desire replacement, seller is to issue a full credit.

- 13 Requirement as to Materials, Seller's Responsibilities and Warranties: Seller warrants and agrees that all materials supplied hereunder shall be manufactured and produced in compliance with the laws, regulations, codes, terms, standards and/or requirements of Underwriters Laboratories Inc., all Federal, State and local authorities and all other authorities having jurisdiction, and that performance of this order shall be in accordance with the above laws, regulations, codes, terms, standards, and/or requirements, and agrees upon request to furnish the County a certificate of compliance in such forms as the County may require.
- 14 The quantity of materials, and/or services, must not be exceeded without the authority in writing being first obtained from the Office of Purchasing.
- 15 Substitutions are not allowed, unless specifically authorized by the County.
- 16 If required, a sufficient number of shop drawings and/or catalog data shall be furnished to the County within 15 days (unless otherwise specified) for necessary approval.
- 17 Seller warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the goods shipped or ordered and seller agrees to hold the County harmless from any and all liability, loss or expense occasioned by such a violation.
- 18 All goods shipped against this order must be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended including Section 6, 7 and 12, and regulations and orders issued under Section 14 thereof.
- 19 In the event any article sold and delivered hereunder shall be defective in any respect whatsoever, seller will indemnify and save harmless the County from all losses or expenses by reason of all accidents, injuries or damages to persons or property resulting from the use of such article or which are contributed to by said defective condition.
- 20 If Seller performs services or constructs, erects, inspects or delivers on the County's premises, seller will indemnify and save harmless buyer from all loss or expense by reason of any accident, injury or damage to persons or property occurring in connection with the Purchase Order.
- 21 Liability for Damage: If this order calls for work to be performed upon property owned or controlled by the County it is understood and agreed that: Mechanic's Liens: The Seller will keep the premises and work free and clear of all mechanic's liens, and furnish the County certificate and waiver as provided by law. Casualty Losses: The work will remain at the seller's risk prior to written acceptance by the County and the seller will replace at his own expense all work damaged or destroyed by fire, force or violence of the elements or any cause whatever. Injury to Employees: The seller will indemnify, save harmless and defend the County from all liability for loss, damage or injury to person or property in any manner arising out of or incident to the performance of this contract. Workmen's Compensation: The seller will indemnify, save harmless and defend the County from any and all claims, demands or suits made or brought against the County on account of any of the terms or provisions of the Workmen's Compensation Law of the State in which said work is to be performed, effective on the date of the Purchase Order and subsequent amendments.
- 22 Bankruptcy: In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the seller including any proceedings under the Chandler Act, or in the event of the appointment, with or without seller's consent, of an assignee for the benefit of creditors or of a receiver then the County shall be entitled to cancel any unfilled part of this Purchase Order without any liability whatsoever.

- 23 Equal Employment Opportunity: The County requires that the seller not discriminate against any employee or applicant for employment because of race, creed, religion, physical or mental handicap, color, sex, national origin, age, occupation, marital status, political expression, sexual orientation or personal appearance. The seller will take affirmative action to ensure that applicants are employed, and the employees are treated during employment with regard to the above. The seller warrants that, within the previous 12 months, he has not engaged in unlawful employment practices as set forth in Section 12.208 of the Howard County Code, Section 19 of Article 49B of the annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.
- 24 Material Safety Data Sheet: If the work to be performed under this contract requires the use of any product that contains any ingredient that could be hazardous or injurious to a person's health, a Material Safety Data Sheet (MSDS) must be provided to the Office of Purchasing, 6751 Columbia Gateway Drive, Suite 501, Columbia, Maryland 21046.
- 25 Terminations:
- Termination for Convenience: The County may terminate a contract, in whole or in part whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving written notice to the Contractor. The County shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid any amount that exceeds the price proposed for the work performed. The Contractor will not be reimbursed for any profits which have been anticipated but which have not been earned up to the date of termination.
- Termination for Default: When the Contractor has not performed or has unsatisfactorily performed the contract, the County may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the County. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the contract. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the County in reprocurring and completing the work.

DOCUMENT B GENERAL CONDITIONS

- 1 INSTRUCTIONS, FORMS, AND SPECIFICATIONS: Instructions, forms, and specifications may be obtained from the Office of Purchasing by: PHONE (410) 313-6370, FAX (410) 313-6388, TDD (410) 313-2323, Monday through Friday from 8:00 A.M. to 5:00 P.M. and from the Internet at: www.howardcountymd.gov/purchasing.
 - 1.1 All proposals are to be submitted on and in accordance with forms for these purposes which are available at the Office of Purchasing. Additional supplementary documentation when requested shall be submitted on the Contractor's letterhead.
 - 1.2 All bids must be clearly identified on the front of the envelope or top of the carton with the solicitation number, title of the solicitation and the due date and time.
 - 1.3 All proposals must be signed by an authorized officer or agent of the company submitting the proposal and delivered in sealed envelopes or cartons to the Office of Purchasing, Gateway Building, 6751 Columbia Gateway Drive, Suite 501, Columbia, MD 21046 no later than the time and date indicated. Proposals received after the time and date indicated will not be considered.
 - 1.4 Each proposal shall be accompanied by an affidavit regarding price fixing, gratuities, bribery, and discriminatory employment practices in accordance with Section E.1.c. (3)(b) of the Howard County Purchasing Manual. When the Contractor is a corporation, a duly authorized representative of said corporation shall execute the affidavit. Affidavit forms are provided in the solicitation package.
 - 1.5 Additional information or clarification of any of the instructions or information contained herein may be obtained from the Office of Purchasing.
 - 1.6 Any Contractor who finds a discrepancy in or omission from the specifications, or is in doubt as to their meaning, or feels that the specifications are discriminatory, shall notify the County Purchasing Agent in writing not later than five days prior to the scheduled opening of proposals. Exceptions taken do not obligate the County to change the specifications. The County Purchasing Agent will notify all Contractors of any changes, additions or deletions to the specifications by addenda posted on the Office of Purchasing web site (www.howardcountymd.gov/purchasing). Addenda to solicitations often occur prior to bid or proposal opening (sometimes within as little as 48 hours). **It is the potential Contractor's responsibility to frequently visit the Office of Purchasing's web site to obtain addenda.**
 - 1.7 The County will assume no responsibility for oral instructions or suggestions. All official correspondence in regard to the specifications shall be directed to and will be issued by the County Purchasing Agent. Proposals may not be withdrawn during this period.
 - 1.8 Unless otherwise specified, all formal proposals submitted shall be irrevocable for four months following proposal opening date, unless the Contractor(s), upon request of the County Purchasing Agent, agree to an extension.

2 BID DEPOSIT

- 2.1 When deemed necessary by the County Purchasing Agent, bid deposits shall be prescribed in public notice inviting bids. Such bid deposits shall be in the amount deemed adequate by the County Purchasing Agent. The deposit shall be a certified check, cashier's check, or treasurers check drawn upon a solvent clearing house bank, or a bid bond issued by an insurance company licensed to do business in Maryland made payable to Director of Finance, Howard County, Maryland. A combination of certified check and bid bonds is not an acceptable response to the bid deposit requirement.
- 2.2 Bid deposits (certified checks) will be returned to the unsuccessful Contractors upon the award of the contract(s), and to the successful Contractor(s) upon execution of the contract(s) and the meeting of bond requirements, if applicable.
- 2.3 The successful Contractor's failure to execute the contract or meet bond requirements within ten working days after the award shall result in the deposit being forfeited to the County as liquidated damages.

3 RESERVATIONS:

- 3.1 The County Purchasing Agent reserves the right to reject any or all proposals or parts of proposals when, in the County Purchasing Agent's reasoned judgment, the public interest will be served thereby.
- 3.2 The County Purchasing Agent, with the approval of the County Executive, may waive formalities or technicalities in proposals as the interest of the County may require.
- 3.3 The County Purchasing Agent reserves the right to increase or decrease the quantities to be purchased at the prices proposed. The quantity intended to be purchased and the period and percentage amount of any such reservation will be stated in the specifications or proposal.
- 3.4 The County Purchasing Agent reserves the right to award contractors or place orders on a lump sum or individual item basis, or such combination as shall, in the County Purchasing Agent's judgment, be in the best interest of the County.
- 3.5 The County Purchasing Agent may waive minor differences in specifications provided these differences do not violate the specification intent nor materially affect the operation for which the item or items are being purchased, nor increase estimated maintenance and repair cost to the County.

4 DELIVERY:

- 4.1 Contractors shall guarantee delivery of supplies in accordance with such delivery schedule as may be provided in the specifications and proposal.
- 4.2 All items shall be delivered F.O.B. Destination, Inside Delivery, and delivery costs and charges included in the proposal unless otherwise stated in the specifications or proposal.
- 4.3 The County Purchasing Agent reserves the right to charge the Contractor or vendor for each day the supplies or services are not delivered in accordance with the delivery schedule. The per diem charge may be invoked at the discretion of the County Purchasing Agent and said sum to be taken as liquidated damages and deducted from the final payment, or charged back to the Contractor or vendor.

- 4.4 The County Purchasing Agent reserves the right to procure the supplies/services elsewhere on the open market if delivery is not made as specified, in which event, the extra cost of procuring the supplies/services may be charged against the Contractor and deducted from any monies due or which may become due him.

5 COMPETITION:

- 5.1 The name of any manufacturer, trade name, or manufacturer or vendor catalog number mentioned in specifications and proposal pages is for the purpose of designating a minimum standard of quality and type and for no other. Such references are not intended to be restrictive. Proposals will be considered for any brand which meets or exceeds the quality of the specifications listed for any item unless otherwise stated in the specifications or proposal.
- 5.2 A Contractor may offer only one price on each item though they may have two or more types that meet specifications. Contractors must determine for themselves which to offer. Submission by a single Contractor of more than one price for a single item shall be sufficient cause for rejection of all prices for that item submitted by the Contractor.
- 5.3 Proposals which show any omission, irregularity, alteration of forms, additions not called for, conditional or unconditional unresponsive proposals, or proposals obviously unbalanced may be rejected.
- 5.4 All proposals must be accompanied by descriptive literature as may be called for by the specifications or proposal. Specifications provided are based on County needs and uses, estimated costs of operation and maintenance, and other significant and/or limiting factors to meet County requirements and shall be consistent with County policies. Minimum specifications and maximum specifications, where included, are not established arbitrarily to limit competition or to exclude otherwise competitive Contractors.

- 6 PROTEST: Any protest concerning the award of a contract shall be decided by the Purchasing Agent. Protests shall be made in writing to the Office of Purchasing and shall be filed within ten days of issuance of award notification. A protest is considered filed when received by the Office of Purchasing. The written protest shall include the name and address of the protestor, identification of the procurement, a statement of the specific reasons for the protest and supporting exhibits. The Office of Purchasing will respond to the written protest within 7 days. The County Purchasing Agent's decision relative to the protest shall be final.

- 7 DISPUTES: In cases of disputes as to whether or not an item or service quoted or delivered meets specifications, the decision of the County Purchasing Agent, or authorized representatives, shall be final and binding on all parties. The County Purchasing Agent may request, in writing, the recommendation of the head of the County agency using the item or other objective sources.

- 8 AUTHORITY: Instructions, specifications, and proposals are issued, and all proposals, quotations, orders, and purchases are made pursuant and subject to the provisions of Article VIII, Howard County Charter; Sections 4.100 through 4.123, Howard County Code, 2003; and the rules and regulations as prescribed by the County Purchasing Agent.

- 9 EXCEPTIONS: The submission of a proposal shall be considered an agreement to all the terms, conditions, and specifications provided herein and in the various proposal documents, unless specifically noted otherwise in the proposal.

- 10 **CASH DISCOUNTS:** Cash discounts will be taken into consideration in determining the award. However, an offer of a cash discount must allow a reasonable period of not less than 30 days in order to be included in evaluation of proposal pricing. A proposal offering a cash discount in a period of less than 30 days will be evaluated as a proposal without a cash discount offer. Should this Contractor obtain an award by reason of their gross price, the County will hold the offer of a cash discount and make every effort to obtain the discount.
- 11 **UNIT PRICES:** Unless clearly shown on the proposal that it is the intent that a reduced total price is being offered on the basis of receiving an award of all items covered by the total, any totals should be the actual sum of the extension of unit prices. Otherwise, in the event of any discrepancy between a unit price(s), extended price(s), and/or total price(s), unit prices will govern and the proposal will be refigured accordingly.
- 12 **NON-WAIVER:** Any waiver of any breach of covenants herein contained to be kept and performed by the Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same condition of covenant or otherwise.
- 13 **PATENTS:** The Contractor shall defend any suit or proceeding brought against the buyer so far as based on a claim on any equipment, or on any part thereof, furnished under this contract which constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Contractor's expense) for the defense of same, and the Contractor shall pay all damages and costs awarded therein against the County. In case said equipment or any part thereof, in such suit held to constitute infringement and the use of said equipment of part if enjoined, the Contractor shall, at its own expense, either procure for the County the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify so that it becomes non-infringing.
- 14 **GOVERNING LAW:**
 - 14.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.
 - 14.2 The laws of Maryland and Howard County shall govern the resolution of any issue arising in connection with the contract, including, but not limited to, all questions on the validity of the contract, the capacity of the parties to enter therein, any modification or amendment thereto, and the rights and obligations of the parties hereunder.
 - 14.3 Contractors must be registered to do business in, and must be in good standing in, the State of Maryland. Contractors not registered must obtain registration information from the Maryland Department of Assessments and Taxation (DAT) website at: www.dat.state.md.us/ or by calling at (410) 767-1340 or Toll Free (888) 246-5941.
- 15 **COMPLIANCE WITH LAWS:** In addition to any other remedy available to the County, breach of any of the paragraphs of this clause shall, at the election of the County, be grounds for termination. Failure of the County to terminate the contract shall not be considered or construed as a waiver of such breach nor as a waiver of any rights or remedies granted or available to the County. If awarded a contract, the Contractor hereby represents and warrants that:

- 15.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- 15.2 It is not in arrears with respect to the payment of any monies due and owing the County, or any department or agency thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract.
- 15.3 It shall comply with all Federal, State, and local laws, ordinances, and legally enforceable rules and regulations applicable to its activities and obligations under the contract.
- 15.4 It shall procure, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under the contract.
- 15.5 The facts and matters set forth hereafter in the contract and made a part hereof are true and correct.

16 **HOLD HARMLESS/INDEMNIFICATION:**

- 16.1 The Contractor shall indemnify and hold the County harmless from and against all liability and expenses, including reasonable attorney's fees, howsoever arising or incurred, alleging damage to property or injury to, or death of, any person arising out of or attributable to the bidder's performance of the contract awarded, provided that the Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials.
- 16.2 Any property or work to be provided by the Contractor under this contract will remain at the Contractor's risk until written acceptance by the County; and the bidder will replace, at Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.

17 **TERMINATION:**

- 17.1 Termination for Convenience: Howard County may terminate a contract, in whole or in part, whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving at least 30 days written notice to the Contractor. Howard County shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid an amount which exceeds the price bid for the work performed. The Contractor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.
- 17.2 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed one or more material terms of the contract, the County may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of Howard County. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the contract. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the County in reprocurring and completing the work.

- 18 **AVAILABILITY OF FUNDS:** The contractual obligation of the County under this contract is contingent upon the availability of appropriated funds from which payment for this contract can be made.
- 19 **INTEGRATION:** These proposal documents, Contractor's response to this solicitation, and subsequent purchase order(s) to the successful Contractor contain the entire understanding between the parties and any additions or modifications hereto may only be made in writing executed by both parties.
- 20 **NON-ASSIGNMENT OF CONTRACT:** The Contractor shall not assign the contract, or any portion thereof, except upon the written approval of the County Purchasing Agent.
- 21 **AGREEMENT:**
- 21.1 The County and Contractor must execute an Agreement resulting from the award of this solicitation. The Agreement entitled Design and Construction Agreement, Document H, is attached for review as part of this solicitation. This process typically takes approximately three weeks from the date the successful Contractor is identified. Exceptions, if any, to the Design and Construction Agreement must be noted in the proposal and exceptions will be considered during evaluation. Exceptions to the Agreement may result in rejection of your bid.
- 21.2 Do not fill in or sign the Design and Construction Agreement as attached. The County will prepare an Agreement specific to this solicitation for execution by the successful Contractor.
- 22 **AFFIDAVIT:** The attached affidavit is provided to facilitate your compliance with the applicable law.
- 23 **EQUAL BUSINESS OPPORTUNITY PARTICIPATION:** If the total contract award is \$50,000 or more, the Contractor shall comply with the County's Equal Business Opportunity (EBO) Program's 10% subcontracting goal. Contractors can use minority, women or disabled business enterprises certified by Howard County, the state of Maryland or other appropriate jurisdiction to satisfy the 10% subcontracting goal.
- If the County exercises its option to renew the contract for another one-year term, the Contractor is expected to meet the EBO Program's 10% subcontracting goal for each subsequent contract year when the contract amount is \$50,000.00 or more.
- 23.1 Document F - Equal Business Opportunity Certificate:
- 23.1.1 Contractors shall submit a completed and executed Equal Business Opportunity Certificate with their proposals.
- 24 **PUBLIC INFORMATION/PROPRIETARY/CONFIDENTIAL INFORMATION:**
- 24.1 The County operates under a public information law, which permits access to most records and documents.
- 24.2 Proposals will be available for public inspection after the award announcement, except to the extent that a Contractor designates trade secrets or other proprietary data to be confidential. It is the Contractor's responsibility to designate confidential material at the time of proposal submission or, if additional time is requested, no later than 5 business days following the

proposal due date. Contractors should use good-faith efforts to designate, by appropriate and clear markings, those portions of their submissions which are deemed to be confidential information. Material designated as confidential must be readily separable from the remainder of the proposal to facilitate public inspection of the non-confidential portion of the proposal. Failure to designate the material appropriately may result in the release of confidential information.

- 24.3 A Contractor's designation of material as confidential will not necessarily be conclusive, and the Contractor may be required to provide justification why such material should not be disclosed, on request, under the Maryland Access to Public Records Act, State Government Article, Sections 10-611 through 10-628, of the Annotated Code of Maryland.

25 COOPERATIVE PURCHASE:

- 25.1 The County reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any contract resulting from this bid to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities including non-public schools. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The supplier/Contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested.
- 25.2 The County assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any contract resulting from this bid. All purchases and payment transactions will be made directly between the Contractor and the requesting entity. Any exceptions to this requirement must be specifically noted in the bid/proposal response.

- 26 ENVIRONMENTALLY PREFERABLE PRODUCTS: The County shall give a percentage price preference not exceeding 5% for the purchase of environmentally preferable products. The percentage price preference will not apply if doing so will cause a denial of Federal or State funding or is inconsistent with Federal or State law.

DOCUMENT C**ALPHA RIDGE LANDFILL WASTE HEAT RECOVERY SYSTEM****SPECIFICATIONS****1 BACKGROUND:**

- 1.1 The Alpha Ridge Landfill (ARL) began accepting waste in 1980. The landfill gas (LFG) collection system and flare were installed in 1999 to maintain the integrity of the cap on the unlined cell. LFG is collected from two areas, the first is a 68-acre unlined cell and the second is a 40-acre operating lined cell. The unlined cell was capped in 1999 in accordance with COMAR 26.04.07.21. The top of the unlined cell is capped with a high-density polyethylene (HDPE) membrane that minimizes infiltration of precipitation into the landfill. The sideslopes of the unlined cell are capped with soil. The lined cell is active and receives a small amount of industrial waste. The County operates and maintains the existing LFG collection and flaring system including all wells, piping, condensate traps, valves, blower system, electrical panels, control systems, and all connections and components. The well field comprised of 87 vertical extraction wells (74 in the unlined cell and 13 in the lined cell) is balanced monthly. The site is an Emissions Guideline (EG) site, not a New Source Performance Standards (NSPS) site, and has a Title V permit.
- 1.2 As part of a separate and previous procurement, the County hired a Contractor to design, permit, construct and start-up a landfill gas to energy system at ARL (LFGTE project). A Jenbacher J320 engine/generator set will convert a portion or all of the landfill gas collected from ARL and convert it to electricity of which a majority of the generated electricity will be sold on the regional transmission grid. A limited amount of the generated electricity will be used to meet on-site power demands. The excess landfill gas which is not utilized by the landfill gas to energy system will be flared off. The notice to proceed for the LFGE project has been issued and the work is underway. The anticipated completion date is February 2012 for the LFGTE project.

2 SCOPE AND OBJECTIVES:

- 2.1 It is the intent of Howard County, Maryland, hereinafter called the "County", to enter into a contract with a qualified Contractor, hereinafter the "Contractor", to design, permit, construct, provide training on operation of the system and start-up a waste heat recovery system to recover waste heat from the Jenbacher J320 to heat the maintenance building at Alpha Ridge Landfill as described in Exhibit A, Scope of Work of Document "H", Design and Construction Agreement.
- 2.2 The County has the following minimum objectives for this project:
- 2.2.1 To replace the existing forced air heater in the maintenance bays and to heat the area to a comfortable level during the winter knowing that the bay doors are often open;
- 2.2.2 To have programmable thermostats for each area; and
- 2.2.3 To have the ability to expand the system;

2.2.4 To meet a Final Completion Date no later than November 19, 2012.

2.3 The County has the following optional objectives for this project:

2.3.1 To heat the office space, conference room, break room, storage areas and bathrooms to a comfortable level during working hours; and

2.3.2 To eliminate the need for existing heating fuel system and electric heat.

2.3.3 To utilize the unused and existing 4 inch recycle line as conduit for the supply and return pipelines to minimize the trenching required.

3 BID DEPOSIT:

3.1 A bid deposit, in the form of a Certified Check, Cashier's Check, or Bid Bond, shall accompany this bid. The bid deposit shall be 5 % of the total amount bid and shall be in accordance with Bid Document "B", Paragraph #2.

3.2 The bid deposit (certified check/cashiers check) will be returned to the unsuccessful Contractor(s) upon award notification and to the successful Contractor upon receipt of the Performance Bond.

4 PERFORMANCE AND PAYMENT BONDS: The successful Bidder shall provide to the County a Performance Bond and a Payment Bond, each in an amount equal to at least 100 percent of the Contract price as detailed in Document "H", Design and Construction Agreement, Article 36.

5 PRE-PROPOSAL CONFERENCE:

5.1 A Pre-Proposal Conference will be held in the Office of Purchasing Conference Room, Gateway Building, 6751 Columbia Gateway Drive, Suite 501, Columbia, Maryland 21046 on Thursday, December 2, 2010 at 10:00 a.m. to discuss objectives and answer questions relating to this Request for Proposals. A site visit to Alpha Ridge Landfill will be offered immediately following the Pre-Proposal Conference. Contractor's attendance is not required but is strongly encouraged.

5.2 It is recommended that attendees read the solicitation prior to attending the conference and bring a copy of the RFP to the conference. In order to assure adequate seating at the pre-proposal conference, please confirm your (1) intent to attend the conference and (2) your desire to participate in the site visit by emailing Julie Spencer jspencer@howardcountymd.gov and referencing this RFP and number. If there is a need for language interpretation and/or other special accommodations, please advise Julie Spencer jspencer@howardcountymd.gov so that reasonable efforts may be made to provide special accommodations.

6 QUESTIONS AND INQUIRIES: The Office of Purchasing is the sole point of contact for this Request for Proposal. Questions concerning this Request for Proposal must be addressed in writing to Gary Sightler Senior Buyer, Fax number (410) 313-6388 or E-mail gsightler@howardcountymd.gov and delivered no later than Friday, December 10, 2010 at 10:00 a.m.

7 ESTIMATED PROJECT VALUE: The estimated value of this project is: **D**

- A - \$30,000 to \$75,000
- B - \$75,001 to \$100,000
- C - \$100,001 to \$250,000
- D - 250,001 to \$500,000**
- E - \$500,001 to \$1,000,000
- F - Over \$1,000,000

8 CONTRACTOR'S QUALIFICATIONS:

- 8.1 Contractors must be engaged in the design, permitting, construction and start-up of waste heat recovery systems and must have been actively engaged in the design, permitting, construction and start-up of waste heat recovery systems or equivalent for a period of no less than five years. Contractors who have specific experience with heat recovery systems for Jenbacher J320 engine generator sets are desired.
- 8.2 Contractors shall have had five years experience in the design and manufacture of HVAC systems and/or waste heat recovery systems, and have an A.S.M.E. and a National Board approved Quality Assurance Department.
- 8.3 Contractors shall have proven experience with managing the federally funded projects.
- 8.4 Contractors shall have a proven record of having provided the services required. The County reserves the right to perform investigations as may be deemed necessary to insure that competent personnel and management will be utilized in the performance of the contract.
- 8.5 Engineers responsible for performing work on the project, including but not limited to civil, structural, mechanical, electrical engineering services, shall be registered as professional engineers with the State of Maryland.

9 CONTRACTOR'S REQUIREMENTS: The Contractor's requirements are defined in Document "H", the Design and Construction Agreement. Additional requirements related to governance, accountability, transparency, data collection, and resources are necessary due to the federal grant money which will help to fund this project. Federal assistance projects are typically subject to terms and conditions including but not limited to record keeping, segregation of costs, quarterly progress and financial reporting, access to records, National Environmental Policy Act determination, waste stream management, budget justification, purchase of American-made or designated country iron, steel and manufactured goods, and Davis Bacon Act wage requirements. The requirements of the grant are provided in Exhibit P. This project has received NEPA approval. The letter indicating such is provided in Attachment 5.

10 SUBMISSION OF PROPOSAL DOCUMENTS – HARD COPY AND CD REQUIRED:

- 10.1 This Request for Proposals requires the return of RFP Document "D" (Technical Proposal Signature Cover Page and Price Proposal Cover Page), RFP Document "E" (Affidavit), RFP Document "F" (Equal Business Opportunity Participation Form), RFP Document "G" (Wage Rate Requirements for Service Contracts form Parts 1 and 2), sufficient detail regarding the Contractor's ability to perform work for project and any exceptions the Contractor may take (on company letterhead). Failure to return required documents may be cause for rejection of proposal.

- 10.2 Contractors shall submit one original, clearly marked as such, and five copies of the complete proposal. The cost of preparing proposals is the responsibility of Contractors. The County may not photocopy your proposal documents for the purpose of complying with this provision requiring a pre-determined number of duplicate copies. Failure to provide the required number of complete duplicate copies may result in rejection of your proposal.
- 10.3 Contractors must submit a CD or flash drive containing the entire, identical hard copy of the proposal in Adobe Acrobat format along with the hard copies required above.
- 10.4 Proposals must be securely sealed and addressed to the Howard County Office of Purchasing, Gateway Building, 6751 Columbia Gateway Drive, Suite 501, Columbia, Maryland 21046.
- 10.5 Technical and price proposals are to be mailed together in one package, but the Technical and Price Proposals must be bound separately. There shall be no reference to the price of products and services in the Technical Proposal. Proposals may be either mailed or hand-delivered. If proposals are sent by mail or commercial express services, the Contractor shall be responsible for actual delivery of the proposal to the Howard County Office of Purchasing before the deadline.
- 10.6 Timely proposals become the property of the County. Late proposals will not be considered and will be returned unopened.
- 10.7 The submission of a proposal on this Request for Proposals will be considered as a representation that the proposer: (1) has carefully investigated all conditions which affect or may, at some future date, affect the performance of the services covered by the proposal; (2) is familiar with the entire area to be serviced as described in the specifications; (3) has carefully reviewed all contract documents; (4) is fully informed concerning the conditions to be encountered, character, quality and quantity of work to be performed and materials to be furnished; and (5) is familiar with all Federal, State and County laws, all codes and ordinances of the County that in any way affect the prosecution of the work or persons engaged or employed in the work.
- 10.8 In responding to this Request for Proposals, each Contractor shall minimally include:
- 10.8.1 The name, title, address, and telephone number of person(s) including subcontractors' employees who will be assigned to perform service under the proposal with an organizational chart that demonstrates the responsibility and interrelationship among employees and subcontractor's.
- 10.8.2 Resumes/credentials of the person(s) including subcontractors' employees who will perform the service required. Credentials may be subject to verification.
- 10.8.3 List of three clients for whom you have designed, permitted, constructed, and started heat recovery systems or equivalent during the past 5 years. Include all costs and contact information for the completed and ongoing heat recovery systems or equivalent. Clients may be contacted.
- 10.8.4 A concise overview of the process, methods, procedures used for at least one recent related project from the list of clients referenced in 10.8.3. The information shall minimally include:

- 10.8.4.1 Preparation of civil, structural, mechanical, electrical and instrumentation specifications and drawings;
- 10.8.4.2 Permitting a waste heat recovery system including experience in working with local planning agencies, and the Maryland Department of the Environment or equivalent;
- 10.8.4.3 The Contractor's constructing a waste heat recovery system including testing, start-up, and training; and
- 10.8.4.4 Experience handling requirements associated with federal grant projects.
- 10.8.4.5 The Contractor's modifications to the building to accommodate alternate heat recovery system.
- 10.8.5 A proposed progress schedule encompassing the entire scope of work with sufficient detail to show precedence relationship and float between major activities and milestones.
- 10.8.6 A description of the Contractor's approach and understanding of the Scope of Work. The description shall minimally address the following:
 - 10.8.6.1 The Contractor's plan for preparation of civil, structural, mechanical, electrical and instrumentation specifications and drawings for the design;
 - 10.8.6.2 The Contractor's plan for working with permitting agencies;
 - 10.8.6.3 The Contractor's plan and methodology for capturing the waste heat and the interconnection with the landfill gas to energy system;
 - 10.8.6.4 The Contractor's plan for supply and return pipelines;
 - 10.8.6.5 The Contractor's plan for modifying the existing building; and
 - 10.8.6.6 The Contractor's plan for construction management, testing, start-up, commissioning and training provided to the County.
- 10.8.7 Price Proposal Cover Page.
- 10.9 To assure a uniform review process and to obtain the maximum degree of comparability, each proposal shall be presented in the order of the above. Proposals should be prepared simply and economically, providing a straightforward, concise description of the offer and all required information. They should be printed on recycled paper and duplexed if possible; staples, clips or rubber bands are preferred to ring binders and unnecessarily elaborate brochures or other expensive visual presentations are neither necessary nor desired. Each page of the proposal should be consecutively numbered.

11 EVALUATION OF OFFERS:

- 11.1 The County intends to make award to the responsible Contractor whose proposal represents the best value to the County. Proposals will be evaluated in two phases; the first based on the technical price submittals and the second on the oral discussions.
- 11.2 The first phase will be evaluated based on the following criteria listed in order of importance:
 - 11.2.1 Experience and technical competence of the Contractor and subcontractors in performing similar services;
 - 11.2.2 Qualifications and technical competence of the staff based on resumes;
 - 11.2.3 Contractor's demonstrated approach and understanding of the scope of work;
 - 11.2.4 Clarity of information and detail provided in the proposed progress schedule;

- 11.2.5 Timeframe/duration of progress schedule;
 - 11.2.6 Completeness of proposal;
 - 11.2.7 Demonstrated experience with heat recovery systems for Jenbacher J320 engine generator sets; and.
 - 11.2.8 Price.
- 11.3 After identifying the short list of the most qualified Contractor(s) based on the evaluation criteria, representative(s) may be required to clarify their proposals by making individual presentations to the evaluation committee.
- 11.4 The County may enter into negotiations with Contractors and invite best and final offers as deemed to be in the best interest of the County. Negotiations may be in the form of face-to-face, telephone, facsimile, e-mail or written communications, or any combination thereof, at the County's sole discretion.
- 11.5 Contractors are strongly advised not to prepare their proposal submissions based on any assumption or understanding that negotiations will take place. Contractors are advised to respond to this Request for Proposals fully and with forth-rightness at the time of proposal submission.
- 11.6 Following the submittal of proposals, Contractors are strongly cautioned not to contact elected officials or members of the evaluation committee regarding the selection process. Inappropriate efforts to lobby or influence individuals or Contractors involved in this selection may result in dismissal from further consideration, at the County's sole discretion.
- 12 BILLING AND PAYMENT:
- 12.1 Invoices shall be submitted for work completed as indicated in Document "H", Design and Construction Agreement, Article 7. The Invoice Form, identified as Exhibit I, shall be used for submitting payments. Invoices shall include the following information:
- 12.1.1 Contractor's name;
 - 12.1.2 Address
 - 12.1.3 Federal tax identification number;
 - 12.1.4 Purchase Order number (the first digit is 2XXXXXXXXXX);
 - 12.1.5 Complete information as required in Exhibit I; and
 - 12.1.6 A Form W-9 must be furnished to the County along with the invoices.
- 12.2 The proper form of County invoices requires that the information enumerated above be included on all invoices. In order to facilitate prompt payment, invoices must contain the prescribed information in order to be successfully entered into the County's ERP system.
- 12.3 Invoices failing to contain the information enumerated above may be returned for correction. The County reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the County, in its discretion deems appropriate.
- 12.4 The County reserves the right to make payments via electronic funds transfer (a.k.a. ACH) on contracts for which this payment vehicle is appropriate.

- 12.5 All amounts referred to herein pursuant to this contract shall be United States of America currency.
- 13 **INSURANCE REQUIREMENTS:** The Contractor shall purchase and maintain, during the term of the contract, the insurance coverages detailed in Document H, Design and Construction Agreement, Exhibit O, Contractor Provided Insurance.
- 14 **WAGE REQUIREMENTS:**
- 14.1 A Contractor that is defined as “Covered Employer” under Howard County Code Sec. 4.122A, copy attached as Exhibit II, shall pay each employee an hourly rate sufficient to at least equal 125% of the federal poverty guidelines for a family of 4 individuals calculated on the basis of a 40-hour work week for 52 weeks. For informational purposes only, the wage rate as of January 1, 2009 is \$13.25. Contractors are responsible for ascertaining the current rate. This wage rate must be paid to employees (full-time or part-time) during the time the employees actually provide services to the County. If the project receives federal grant money, then the Davis Bacon Act wage requirements would apply.
- 14.2 Contractors must complete the Wage Rate Requirements for Service Contracts form Parts 1 and 2, Document “G” and submit them with their bids. The forms will serve as written certification to the County of your firm’s intent to comply with the County’s wage requirements during the initial and any subsequent renewals.
- 14.3 If a Covered Employer commits in its bid or proposal to provide health insurance to an employee who provides services to the County, the Covered Employer may: (1) certify in its bid or proposal the per-employee hourly cost of the employer’s share of the premium for that insurance, and (2) reduce the wage paid under the law to an employee covered by the insurance by all or part of the per-employee hourly cost of the employer’s share of the premium.
- 14.4 All prices shall take the current wage rate into account and there shall be no unit price adjustments made except in the event of future wage rate increases. Future wage rate increases are hereby defined as any new rates approved by the County that take affect after and supersede the rate shown in this solicitation.
- 14.5 A Covered Employer shall not subdivide a contract; pay an employee through a third party; or treat an employee as a subcontractor or independent Contractor to avoid the imposition of any requirement under this law.
- 14.6 Failure to comply with this requirement at any time during the initial term and any subsequent renewals may be sufficient cause for termination for default. A violation of this law is a Class A civil offense and, in addition to a fine, the County Purchasing Agent may suspend or debar the violator under Sec. 4.117.

EXHIBIT I-A
HOWARD COUNTY CODE, SEC. 4.122A
WAGE REQUIREMENTS

Section 4.122A. Wage Requirements.

(a) **"Covered Employer"** defined. in this section, "Covered Employer" means a Contractor or subcontractor that is subject to this section.

(b) **Scope.**

(1) A County contract for procurement of contractual services shall require the Contractor and any subcontractor to comply with the wage requirements of this section.

(2) This section does not apply to:

(i) A Contractor who:

(1) Employs fewer than 5 employees when the Contractor submits a bid or proposal, and
 (2) Does not employ 5 or more employees at any time the contract is in effect as a result of performing the contract;

(ii) A Contractor who, at the time a contract is signed:

(1) Has received less than \$100,000 from the County in the most recent 12-month period;
 (2) Will be entitled to receive less than \$100,000 from the County under that contract in the next 12-month period;

(iii) A County contract with a governmental entity;

(iv) A County contract with a nonprofit organization that has qualified for an exemption from Federal income taxes under section 501(c)(3) of the internal revenue code;

(v) A County contract awarded under § 4.110, 4.111, or 4.112 of this subtitle;

(vi) A County contract for electricity, telephone, cable television, water, sewer, or similar service delivered by a regulated public utility;

(vii) An employer to the extent that the employer is expressly precluded from complying with this section by the terms of any federal or state law, contract, or grant; and

(viii) A County contract entered into under cooperative procurement with another government or organization of governments.

(c) **Solicitation Requirements.**

(1) Each bid or proposal to provide contractual services shall specify how the covered employer will comply with the wage requirements of this section.

(2) To avoid the imposition of any requirement under this section, a covered employer shall not:

(i) Subdivide a contract;

(ii) Pay an employee through a third party; or

(iii) Treat an employee as a subcontractor or independent Contractor.

(d) **Health Insurance.** If a covered employer commits in its bid or proposal to provide health insurance to an employee who provides services to the County, the covered employer may:

(1) Certify in its bid or proposal the per-employee hourly cost of the employer's share of the premium for that insurance, and

(2) Reduce the wage paid under subsection (e) to an employee covered by the insurance by all or part of the per-employee hourly cost of the employer's share of the premium.

(e) **Wage Requirement.**

(1) A covered employer shall pay to each employee an hourly rate sufficient to at least equal 125% of the Federal Poverty Guidelines for a family of 4 individuals calculated on the basis of a 40-hour work week for 52 weeks.

(2) For purposes of this subsection, the Federal Poverty Guidelines are the most recent of those that are updated periodically in the Federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(3) The hourly rate shall be rounded to the nearest multiple of 5 cents.

(4) The wage rate calculated under this subsection shall be paid to an employee during the time the employee actually provides services to the County.

- (f) **Exceptions to Wage Requirement.** The wage requirements of this section do not apply to an employee:

- (1) Who performs no measurable work related to any contract with the County;
- (2) Who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this section;
- (3) Who participates for not longer than 120 days in a calendar year in a Government-Operated or Government-Sponsored Summer Youth Employment Program;
- (4) For whom a different wage rate is expressly set in a collective bargaining agreement; or
- (5) For whom a higher wage rate is required by a Federal, State, or County law.

- (g) **Enforcement.**

- (1) The County purchasing agent shall require each covered employer to:
 - (i) Certify that the employer and any subcontractor will comply with this section;
 - (ii) Keep the records necessary to show compliance;
 - (iii) Submit the records to the purchasing agent on request of the purchasing agent; and
 - (iv) Publicize the requirements of this section to any employees who may be covered by this section.
- (2) The County purchasing agent shall enforce this section and investigate any complaint of a violation.
- (3) An employer shall not discharge or otherwise retaliate against an employee for asserting a right under this section or for filing a complaint of violation. Any retaliation is a violation of this section punishable under § 4.121 of this subtitle.
- (4) Each contract subject to this section:
 - (i) May specify that liquidated damages for noncompliance with this section include the amount of unpaid wages, with interest, and that the Contractor is jointly and severally liable for noncompliance by a subcontractor
 - (ii) Shall specify that an aggrieved employee, as a third-party beneficiary, may bring a civil action to:
 - (1) Enforce the payment of wages due under this section;
 - (2) Recover wages due under this section with interest; and
 - (3) Recover reasonable attorney's fees.

- (h) **Annual Report.** On or before September 1 of each year, the County purchasing agent shall report to the County Council and the County Executive on the operation of this section during the previous fiscal year.

Exhibit II-A

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Charter Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Code Section 4.119. Ethics and Fair Employment Practices.

(a) **Conflict of Interest.** Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) **Discouragement of Uniform Bidding.**

(1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.

(2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.

(3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "human Rights" of Title 12 of the Howard County Code Section 24 of Article 49B of the Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

(2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.

(3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the county purchasing agent.

(4) Payment of subcontractors. All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

Code Section 22.204. Prohibited Conduct and Interests.

(a) **Participation Prohibitions:** County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) **Employment Prohibitions:** Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(i) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within one (1) year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) **Solicitation/Acceptance of Gifts or Compensation:** No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) **Use of Prestige of Office:** No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) **Disclosure of Confidential Information:** Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.

DOCUMENT D**TECHNICAL PROPOSAL SIGNATURE COVER PAGE**TITLE: Alpha Ridge Landfill Heat Recovery System

TO: HOWARD COUNTY OFFICE OF PURCHASING
 6751 Columbia Gateway Drive, Suite 501
 Columbia, MD 21046

The undersigned agrees to furnish and deliver the above goods and/or services in accordance with the specifications issued for same, and subject to all terms, conditions, and requirements in the Request for Proposals, and in the various proposal documents:

Is the company a certified Minority-, Women-, or Disabled-Owned Business Enterprise? ☐ YES ☐ NO

If yes, indicate the type of minority ownership:

<input type="checkbox"/> American Indian Female	<input type="checkbox"/> Disabled Female	<input type="checkbox"/> Far Eastern Female	<input type="checkbox"/> Near Eastern Female
<input type="checkbox"/> American Indian Male	<input type="checkbox"/> Disabled Male	<input type="checkbox"/> Far Eastern Male	<input type="checkbox"/> Near Eastern Male
<input type="checkbox"/> Black Female	<input type="checkbox"/> Eskimo/Aleutian Female	<input type="checkbox"/> Hispanic Female	<input type="checkbox"/> White Female
<input type="checkbox"/> Black Male	<input type="checkbox"/> Eskimo/Aleutian Male	<input type="checkbox"/> Hispanic Male	

If yes, indicate the certification(s) held:

☐ Howard County Government ☐ MD Dept. of Transportation ☐ City of Baltimore ☐ Other

Certification Number(s) and Expiration Date(s) _____

Does your company have a written non-discrimination policy which includes race, creed, religion, handicap, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, gender identity and expression, personal appearance, familial status or source of income? ☐ YES ☐ NO

The County Purchasing Agent reserves the right to request such documentation, if desired, at a later date.

COMPANY NAME _____

FEDERAL TAX IDENTIFICATION NO./SOCIAL SECURITY NO. _____

ADDRESS _____

 (City) (State) (Zip Code)

TELEPHONE _____ FAX _____

E-MAIL ADDRESS _____

Delivery Time From Date of Award _____

(This delivery time will be considered in determining the award.)

Payment Terms _____ F.O.B. Destination, Inside Delivery

The company will accept Visa procurement cards: ☐ Yes ☐ No

(Contractors are prohibited from charging any additional fees over and above their bid prices to process payments on procurements cards. This will be considered in determining the award.)

Howard County is exempt from all local, state, and federal taxes, and prices stipulated by the Contractor are considered maximum and are not subject to any increase due to any taxes, or any other reason. The County's Tax Exemption number is 30001219.

[] We wish to submit a "NO BID" at this time, but request that our company remain on your bidders list for future solicitations.

CONFIDENTIAL INFORMATION

- The County operates under a public information law that permits access to most records and documents.
- It is the Contractor's responsibility to designate confidential material at the time the proposal is submitted or, upon request, no later than 5 business days following the proposal due date.
- Confidential material must be readily separable from the remainder of the proposal.
- Failure to designate confidential material may result in release of such information.
- The County is not bound by what the Contractor deems confidential. The custodian of records (i.e. the Purchasing Administrator) makes a responsible decision of what is confidential under the act.

SIGNATURE_____ DATE_____

PRINTED NAME_____ TITLE_____

DOCUMENT D**PRICE PROPOSAL COVER PAGE**

(Must be submitted separately from the Technical portion of the proposal)

TITLE: Alpha Ridge Landfill Waste Heat Recovery SystemNIGP CODE/PRODUCT CODE: 91341

TO: HOWARD COUNTY OFFICE OF PURCHASING
 6751 Columbia Gateway Drive, Suite 501
 Columbia, MD 21046

ITEM NO.	COMMODITY/SERVICE DESCRIPTION	ESTIMATED QUANTITY	U/M	PRICE
Standard Project Installation				
1.	Design and Permitting, Waste Heat Recovery System, Complete Design and Provision of all Required Permits	1	Lump Sum	\$ _____
2.	Construction, Waste Heat Recovery, Complete Construction, All Equipment, Materials and Supplies, Startup, Testing, Commissioning, and Training.	1	Lump Sum	\$ _____
3.	Federal Requirements, Reporting requirements related to projects funded wholly or partially with Federal Grant Funds.	1	Lump Sum	\$ _____
4.	*TOTAL PROJECT COST (ITEM 1+2+3) =			\$ _____
Option A- Utilization of Existing Line				
5.	Credit for Use of 4" Recycle Line. Any use of existing pipe must be certified to be compliant to process conditions by a professional engineer.	1	Lump Sum	\$ (_____)
Option B- Building Cooling				
6.	Energy recovery system to provide cooling in addition to heat	1	Lump Sum	\$ _____
Summary:				
TOTAL PROJECT COST (ITEM 4)				\$ _____
TOTAL CREDIT FOR OPTION A (ITEM 5)				\$ (_____)
COST OF OPTION B (ITEM 6)				\$ _____
TOTAL PROPOSAL PRICE (ITEM 4 minus ITEM 5 plus ITEM 6)				\$ _____

*Pricing comparisons will be based the Total Project Cost listed on Line 4.

Contractor must submit general labor rates along with this page to be used for calculating additional services if required.

THE PERSON COMPLETING THE PRICE PROPOSAL COVER PAGE
MUST INITIAL ANY ALTERATIONS IN FIGURES IN INK.

COMPANY NAME_____

DOCUMENT D**CONTRACTOR'S QUALIFICATION INFORMATION**

(Must be completed, signed, and submitted with the proposal.)

Name of Company: _____

1. References: Give name, address, telephone number of owner or manager of three accounts for which Contractor has provided landfill gas to energy design, permit, construction and startup services during the past five years.

1.1.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
	_____	_____
1.2.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
	_____	_____
1.3.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
	_____	_____

2. The Contractor has provided the above services for ____ years. (Note: Five years minimum)

DOCUMENT E

AFFIDAVIT

(Must be completed, signed, and submitted with the proposal.)

Contractor _____

Address _____

Telephone _____ RFP Number _____

I, _____, the undersigned, _____ of the above named
(Print Signer's Name) (Print Office Held)

Contractor does declare and affirm this _____ day of _____, _____, that I hold the
(Month) (Year)
aforementioned office in the above named Contractor and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Howard County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Howard County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Howard County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 12.200 of the Howard County Code, or of Section 16 of Article 49B of the Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

DATE

SIGNATURE

PRINTED NAME

TITLE

DOCUMENT F

EQUAL BUSINESS OPPORTUNITY PARTICIPATION

<p align="center"><u>NOTICE TO PRIME CONTRACTORS</u> 10% SUBCONTRACTING GOAL ON CONTRACTS VALUED AT \$50,000 OR MORE</p>

Howard County Code Section 4.122 established an Equal Business Opportunity program to foster overall equity and fairness to all citizens in relation to business enterprises conducting business with the County.

If a total contract award is \$50,000 or more, the Prime Contractor shall make a genuine good faith effort to comply with the Howard County Equal Business Opportunity (EBO) program's 10% subcontracting goal. The Prime Contractor shall make a good faith effort to obtain minority subcontractor participation even if the Prime Contractor has the capability to complete the work with its own workforce. This good faith effort is also applicable to Prime Contractors who are themselves minority-owned firms. The percentage requirement may vary if the contract is funded by a federal or state agency. Prime Contractors shall submit the following completed *Equal Business Opportunity Schedule of Participation* with the bid. While the County requests that Contractors identify their subcontractors at the time bids are submitted; the County acknowledges that sometimes Contractors may need to change their subcontractor(s). Changes in subcontractors may be made by providing written notification to the Office of Purchasing EBO Coordinator, of the change prior to award. After contract award, changes in subcontractors require written approval of the Office of Purchasing EBO Coordinator.

Possible areas of obtaining subcontracting participation include, but are not limited to, flagging services, hauling, copying and printing, and the purchase of materials used in performing the contract. Contractors may use minority, women or disabled business enterprises certified by Howard County, Maryland; the Maryland Department of Transportation; the City of Baltimore, Maryland; or another certifying entity in order to satisfy the 10% subcontracting goal. The website addresses for lists of minority businesses are:

http://www.howardcountymd.gov/Purchasing/Purchasing_EBO.htm
http://www.mdot.state.md.us/MBE_Program/index.html
<http://cityservices.baltimorecity.gov/mwboo>

<p align="center">PRIME CONTRACTOR INVOICING REQUIREMENTS</p>
--

Prime Contractors shall use the following County standard *Invoice* that will record EBO participation. If there is no EBO participation in a particular billing cycle due to the nature of the goods or services provided, that must be noted on the invoices as well. Even though Prime Contractors may have their own invoice forms, the County's form must be used, either in place of or in addition to the Contractor's invoice form, so that County can track compliance of EBO participation in a standard and consistent manner. The form is available for download on the Office of Purchasing web site at www.howardcountymd.gov/purchasing.

Prime Contractors failing to achieve the EBO program goal following a good faith effort to obtain participation must complete the *Equal Business Opportunity Program Request for Subcontracting Waiver* (available from the Office of Purchasing) and provide documentation of its good faith attempts to obtain EBO participation. The County will determine if the efforts made satisfy a good faith attempt. A waiver

will only be considered in rare contracts after a determination that the Prime Contractor has made a good faith effort and thoroughly documented the efforts.

If the County exercises its option to renew the contract for another one-year term, it is expected that the EBO subcontracting goal will be met for each subsequent contract year when the contract amount is \$50,000.00 or more. Questions relating to the EBO program shall be directed to Jacqueline Donaldson-Grey, at jgrey@howardcountymd.gov or 410-313-6370.

SUBCONTRACTOR REPORTING REQUIREMENTS

Successful Prime Contractors shall provide their subcontractors with the following *Subcontractor Monthly Payment Report*. This report must be submitted by the 10th of each month by the subcontractor even if there has been no payment/work performed for the preceding billing cycle to the Office of Purchasing unless otherwise specified. The form is available for download on the Office of Purchasing web site at www.howardcountymd.gov/purchasing.



HOWARD COUNTY, MARYLAND
EQUAL BUSINESS OPPORTUNITY (EBO)
SCHEDULE OF PARTICIPATION

(Must be completed, signed, and submitted with the proposal.)

COUNTY USE ONLY	
CONTRACT NAME: <u>Alpha Ridge Landfill Waste Heat Recovery System</u>	
Solicitation /Project#:	<u>RFP 10-2011</u> PO#: _____ Contract Renewal #: _____
Contract Amount:	_____ Contract Term: _____ EBO APPROVAL: _____
PRIME CONTRACTOR	
CONTRACTOR NAME: _____	
Address: _____	
Contact Representative:	_____ Phone: _____
Email:	_____ EBO Status (Y/N): _____ EBO TYPE*: _____
Certifying Agency:	_____ Certification #: _____ Contract Amount: \$ _____
COUNTY USE ONLY Amount: _____ Date: _____	
EBO SUBCONTRACTOR	
CONTRACTOR NAME: _____	
Address: _____	
Contact Representative:	_____ Phone: _____
Email:	_____ EBO Status (Y/N): _____ EBO TYPE*: _____
Certifying Agency:	_____ Certification #: _____ % Participation: _____
Services to be performed: _____	
COUNTY USE ONLY Amount: _____ Date: _____	
EBO SUBCONTRACTOR	
CONTRACTOR NAME: _____	
Address: _____	
Contact Representative:	_____ Phone: _____
Email:	_____ EBO Status (Y/N): _____ EBO TYPE*: _____
Certifying Agency:	_____ Certification #: _____ % Participation: _____
Services to be performed: _____	
COUNTY USE ONLY Amount: _____ Date: _____	

Signature (Vendor Official)

Date

Title

*EBO TYPES: AF/AM=Native American Alaskan
FF/FM=Asian Pacific Islander
WF=White Female

BF/BM=Black
HF/HM=Hispanic

DF/DM=Disabled
NF/NM=Near Eastern

GWS:jcs.

Howard County, Maryland
Office of Purchasing

EQUAL BUSINESS OPPORTUNITY (EBO) SUBCONTRACTOR PARTICIPATION

[illegible]

PRIME CONTRACTOR INVOICING REQUIREMENTS PART TWO

EBO Subcontractor Company Name: _____ Street Address: _____ City, ST, Zip: _____ Phone Number: _____	EBO Participation Goal: _____ 0% or _____ \$0.00 <i>(from the EBO Participation Form)</i> Total EBO Amount Billed to Date: _____ \$0.00 <i>(includes this month's bill)</i> Total Amount Paid to EBO Subcontractor: _____ \$0.00 Balance Due to EBO Subcontractor: _____ \$0.00 <i>(this month's bill)</i> Total Percent EBO Participation Goal to Date: _____ 0%
---	--

* **REMINDER:** EBO SUBCONTRACTORS ALSO REPORT THEIR PARTICIPATION TO THE OFFICE OF PURCHASING MONTHLY ON THE COUNTY'S STANDARD FORM THAT REQUIRES ITEMIZED INVOICES. CONTACT THE EQUAL BUSINESS OPPORTUNITY COORDINATOR IN THE OFFICE OF PURCHASING, WITH EBO PARTICIPATION QUESTIONS AT (410) 313-6370.

Invoice# from EBO Subcontractor	Date of Invoice	Description of Invoice	Total Invoice Amount	Amount Paid to EBO SubContractor
Total			\$0.00	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief, the work covered by this invoice has been completed in accordance with the contract and that the current payment shown herein is now due.

 Prime Contractor Authorized Signature

 Date



SUBCONTRACTING REPORTING REQUIREMENTS

Howard County, Maryland

Office of Purchasing

SUBCONTRACTOR'S MONTHLY PAYMENT REPORT

EQUAL BUSINESS OPPORTUNITY (EBO) SUBCONTRACTOR PARTICIPATION

Howard County Office Of Purchasing

Attn: EBO Coordinator

6751 Columbia Gateway Drive, Suite 501

Columbia, MD 21046

Fax: (410) 313-6388

QUESTIONS SHOULD BE DIRECTED TO:

Diane L. George

Interim Equal Business Opportunity Coordinator

Phone: (410) 313-6374

Email: dgeorge@howardcountymd.gov

Your firm has been identified as an EBO Subcontractor for FILL IN PRIME CONTRACTOR for CONTRACT TITLE. To ensure EBO Subcontracting Participation and compliance, you must complete this form and forward via, mail, fax or email to the Office of Purchasing, Attn: Jackie Donaldson-Grey.

Due by the 10th of Each Month for the Preceding Month

From:

Company Name: _____

Street Address: _____

City, ST, Zip: _____

EBO/MBE Certification #: _____

Services to be Performed: _____

Contact Person: _____

Email Address: _____

Phone Number: _____

Fax Number: _____

For the Period of: _____ **2010**

Original Contract Amount:

(issued from Howard County)

_____ \$0.00

EBO Participation Goal 0% = _____ \$0.00

(from the EBO Participation Form)

Invoice# to Prime Contractor	Date of Invoice	Total Invoice Amount	Date Payment was Received	Amount Received from Prime Contractor
Total				\$0.00

Prime Contractor

Company Name: _____

Street Address: _____

City, ST, Zip: _____

Contact Name: _____

Email Address: _____

Phone Number: _____

Authorized Signature

Date

DOCUMENT G
HOWARD COUNTY, MARYLAND
WAGE RATE REQUIREMENTS FOR SERVICE CONTRACTS
EXEMPTION STATUS

Subtitle 1, Section 4.122A(b)(2)
(Must be completed, signed, and submitted with the proposal.)

PART 1

Solicitation No.: 10-2011

Solicitation Title: Alpha Ridge Landfill Waste Heat Recovery System

Please check all that apply. If none of the following statements apply to your company please sign below and continue to Part 2.

Prime Contractor	SubContractor	
<input type="checkbox"/>	<input type="checkbox"/>	The Contractor employs fewer than five (5) employees at any time during the contract term.
<input type="checkbox"/>	<input type="checkbox"/>	The Contractor received less than \$100,000 from the County in the most recent 12-month period prior to the contract start date; and will be entitled to receive less than \$100,000 from the County within the next 12-month period.
<input type="checkbox"/>	<input type="checkbox"/>	The Contractor is a public entity.
<input type="checkbox"/>	<input type="checkbox"/>	The Contractor is a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code.
<input type="checkbox"/>	<input type="checkbox"/>	The Contractor participates in a contract awarded under Code Secs.4.110 (Sole Source), 4.111 (Emergency), or 4.112 (Expedited).
<input type="checkbox"/>	<input type="checkbox"/>	The Contractor is a regulated public utility.
<input type="checkbox"/>	<input type="checkbox"/>	The Contractor is expressly precluded from complying with Section 4.122A by the terms of any federal, state or County law, federal or state contract or grant and the contract falls within the extent of that preclusion.
<input type="checkbox"/>	<input type="checkbox"/>	The contract has been awarded under a cooperative procurement with another government or organization of governments.

NOTE: The wage requirements do not apply to an employee: (1) who performs no measurable work related to any contract with the County; (2) who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under the law; (3) who participates for not longer than 120 days in a calendar year in a government-operated or government-sponsored summer youth employment program; (4) for whom a different wage rate is expressly set in a collective bargaining agreement; or (5) for whom a higher wage is required by a federal, state, or County law.

Please check here if none of the above is applicable

☐

Contractor Name: _____

Date: _____

Authorized Signature: _____

(Typed Name of Signatory)

DOCUMENT G
HOWARD COUNTY, MARYLAND
WAGE RATE REQUIREMENTS FOR SERVICE CONTRACTS
CERTIFICATION

Subtitle 1, Section 4.122A(b)(2)
(Must be completed, signed, and submitted with the proposal.)

PART 2

Solicitation No.: 10-2011

Solicitation Title: Alpha Ridge Landfill Waste Heat Recovery System

I do hereby certify that I have read and understand the provisions of Section 4.122A of the Howard County Code, am an authorized representative of the Contractor named below and:

- ☐ As a "covered employer" the Contractor and all subcontractors will comply with the County's Wage Rate Requirements for Service Contracts (Howard County Code Section 4.122A) and pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the applicable wage requirements at the time the work is performed. The Contractor will keep the records necessary to show compliance and will submit such records to the Purchasing Agent on request of the Purchasing Agent; and will publicize the requirements of this law to any employees who may be covered by the law.
- ☐ Contractor's proposal includes sufficient funds to meet these requirements.
- ☐ The per employee hourly cost of the premium for health insurance to an employee who provides services to the County that appears in the bid or proposal is correct.

Contractor Name: _____		Vendor Identification No. _____	
Address: _____			
Telephone No: _____	Fax No.: _____	E-mail: _____	
Authorized Representative: _____			
Signature	Typed Name of Signatory	Title	Date

Howard County, Maryland
Office of Purchasing
6751 Columbia Gateway Drive, Suite 501
Columbia, MD 21046
(410) 313-6370
Fax: (410) 313-6388

DOCUMENT H

DESIGN AND CONSTRUCTION AGREEMENT

BETWEEN

HOWARD COUNTY, MARYLAND

AND

CONTRACTOR NAME

DATED AS OF

Month and Day, 2010

TABLE OF CONTENTS

	Page
1. DEFINITIONS.....	1
2. RESPONSIBILITIES OF THE COUNTY	7
2.1 <u>Access to Project Site.</u>	7
2.2 <u>Project Manager.</u>	7
2.3 <u>Payments.</u>	7
2.4 <u>Actions by the County.</u>	8
2.5 <u>Prudent Industry Practices.</u>	8
3. RESPONSIBILITIES OF CONTRACTOR	8
3.1 <u>Scope of Work; Applicable Standards.</u>	8
3.2 <u>Project Requirements.</u>	9
3.3 <u>Project Permits.</u>	9
3.4 <u>Hazardous Materials.</u>	10
3.5 <u>Utility Services and Operating Consumables.</u>	10
3.6 <u>Sanitary Conditions.</u>	10
3.7 <u>Price Breakdown.</u>	10
3.8 <u>Protection of Work.</u>	10
3.9 <u>Handling and Storage of Materials and Equipment.</u>	10
3.10 <u>Quality Assurance.</u>	10
3.11 <u>Compliance with County Rules.</u>	11
3.12 <u>Assistance with Government Authorities.</u>	11
3.13 <u>Cooperation with Engineer and Consultants.</u>	11
3.14 <u>Public Announcements.</u>	11
3.15 <u>Contractor Staff.</u>	11
3.16 <u>County Requirements.</u>	12
3.17 <u>Liens.</u>	12
3.18 <u>Progress Reports and Meetings.</u>	12
3.19 <u>CPM Schedule & Schedule of Values.</u>	12
3.20 <u>Performance Tests.</u>	13
3.21 <u>Security.</u>	13
3.22 <u>Geotechnical Conditions.</u>	13
3.23 <u>Operation and Maintenance Manual.</u>	13
3.24 <u>Notification of Potential Delays or Adverse Effects.</u>	13
3.25 <u>Site Safety Program.</u>	13
3.26 <u>Compliance with Applicable Laws.</u>	14
3.27 <u>Delays.</u>	14
3.28 <u>Insurance.</u>	14
3.29 <u>Nondiscrimination.</u>	14
3.30 <u>Energy Efficiency And Conservation Block Grant Program.</u>	15
4. CONTRACTOR REPRESENTATIONS CONCERNING THE WORK; PROJECT SITE	15
4.1 <u>Skills, Expertise and Capacity.</u>	15
4.2 <u>Project Site.</u>	15
5. SPARE PARTS.....	16
5.1 <u>Spare Parts.</u>	16

6.	FIXED CONSTRUCTION PRICE.....	16
6.1	<u>Fixed Construction Price</u>	16
6.2	<u>Taxes</u>	17
6.3	<u>Adjustments to Scheduled Dates</u>	17
7.	TERMS OF PAYMENT.....	17
7.1	<u>Fixed Construction Price Invoices</u>	17
7.2	<u>Payment of Invoices</u>	17
7.3	<u>Withholding Payment</u>	18
7.4	<u>Notice of Delayed Payment</u>	18
7.5	<u>Retainage</u>	19
7.6	<u>Release of Retainage</u>	19
7.7	<u>Release of Liens</u>	20
7.8	<u>County's Right of Offset</u>	20
7.9	<u>No Effect on Scheduled Dates or Fixed Construction Price</u>	20
8.	COMMENCEMENT OF THE WORK.....	20
8.1	<u>Notice to Proceed</u>	20
8.2	<u>Priority of Work</u>	20
8.3	<u>Interim Notice to Proceed</u>	21
9.	SUBCONTRACTORS AND LABOR RELATIONS.....	21
9.1	<u>Subcontractors</u>	21
9.2	<u>Purchase Orders and Subcontracts</u>	21
9.3	<u>Labor Disputes</u>	22
10.	DETAILED PLANS; INSPECTION; EFFECT OF REVIEW AND COMMENT.....	22
10.1	<u>Detailed Plans; Documents for Approval</u>	22
10.2	<u>Changes to Specifications or Scope of Work</u>	23
10.3	<u>Inspection</u>	23
10.4	<u>Access to Work</u>	24
10.5	<u>Effect of Inspection of Work</u>	24
10.6	<u>Record Drawings</u>	24
10.7	<u>Field Copies and Final Drawings</u>	25
11.	THERMAL ENERGY.....	25
11.1	<u>Sources of Thermal Energy</u>	25
11.2	<u>Testing</u>	25
11.3	<u>Cooperation with County and other Contractors</u>	25
11.4	<u>Meters</u>	25
12.	START-UP AND MECHANICAL COMPLETION.....	26
12.1	<u>Start-Up</u>	26
12.2	<u>System Checkout Packages</u>	26
12.3	<u>Mechanical Completion</u>	27
12.4	<u>Notice of Mechanical Completion</u>	27
12.5	<u>No Effect on Scheduled Substantial Completion Date, Scheduled Final Completion Date, Fixed Construction Price</u>	27
13.	PERFORMANCE TESTS; SUBSTANTIAL COMPLETION.....	28
13.1	<u>Performance Test Plan</u>	28
13.2	<u>Performance Test Report</u>	28

13.3	<u>Substantial Completion</u>	28
13.4	<u>Notice of Substantial Completion</u>	29
13.5	<u>No Effect on Scheduled Substantial Completion Date, Scheduled Final Completion Date, or Fixed Construction Price</u>	30
14.	DELAY LIQUIDATED DAMAGES; BUYDOWN AMOUNT	30
14.1	<u>Delay Liquidated Damages</u>	30
14.2	<u>Satisfaction of Performance Guarantees</u>	30
14.3	<u>Buydown Amount</u>	30
15.	FINAL COMPLETION	31
15.1	<u>Final Completion</u>	31
15.2	<u>Notice of Final Completion</u>	32
15.3	<u>No Effect on Scheduled Final Completion Date, Fixed Construction Price</u>	32
16.	CHANGE ORDERS	32
16.1	<u>Changes in Work Directed by the County</u>	32
16.2	<u>Change Order</u>	33
16.3	<u>Suspension Due to Change Order</u>	33
16.4	<u>Change in Law</u>	34
16.5	<u>Contractor Proposals</u>	34
16.6	<u>Contractor Proposed Change Order</u>	34
16.7	<u>Minor Changes</u>	34
16.8	<u>Field Orders</u>	35
17.	WARRANTIES CONCERNING THE WORK	35
17.1	<u>Warranties</u>	35
17.2	<u>Breach of Warranties</u>	35
17.3	<u>Subcontractor Warranties</u>	36
17.4	<u>No Effect on Scheduled Dates or Fixed Construction Price</u>	37
17.5	<u>Governing Law of Warranties</u>	37
18.	TITLE; RISK OF LOSS	37
18.1	<u>Title</u>	37
19.	DEFAULT AND TERMINATION	38
19.1	<u>Contractor Events of Default</u>	38
19.2	<u>County Remedies</u>	39
19.3	<u>County Events of Default</u>	40
19.4	<u>Contractor Remedies</u>	41
20.	TERM; TERMINATION FOR CONVENIENCE; TERMINATION PAYMENT; TERMINATION FOR EXCESSIVE DAMAGES.....	41
20.1	<u>Term</u>	41
20.2	<u>County's Termination for Convenience</u>	41
20.3	<u>Termination Payment</u>	41
20.4	<u>County's Termination Due to Excessive Damages</u>	42
21.	SUSPENSION	42
21.1	<u>Suspension by the County</u>	42
21.2	<u>Contractor Obligations During Suspension</u>	42
21.3	<u>Escalation Costs</u>	43

21.4	<u>Extension of Scheduled Substantial Completion Date.</u>	43
21.5	<u>Contractor Claims for Compensation.</u>	43
22.	FORCE MAJEURE	43
22.1	<u>Notice of Force Majeure.</u>	43
22.2	<u>Definition of Force Majeure.</u>	44
22.3	<u>Removal of Force Majeure.</u>	45
22.4	<u>Extension of Scheduled Substantial Completion Date.</u>	45
23.	INSURANCE	46
23.1	<u>Contractor Provided Insurance</u>	46
23.2	<u>Certificates of Insurance.</u>	46
23.3	<u>Notice of Cancellation.</u>	47
23.4	<u>Failure to Provide Insurance.</u>	47
23.5	<u>Cooperation.</u>	47
23.6	<u>Claims.</u>	47
24.	LOSS OR DAMAGE	47
24.1	<u>Project Repair and Replacement Responsibility.</u>	47
24.2	<u>Responsibility for Safe Delivery of Materials, Equipment and Supplies.</u>	47
25.	INDEMNIFICATION	48
25.1	<u>Contractor Indemnification.</u>	48
25.2	<u>Indemnification Claims.</u>	48
25.3	<u>Survival of Indemnification.</u>	49
26.	PATENT INFRINGEMENT	49
26.1	<u>Patent Infringement and Indemnification Rights.</u>	49
26.2	<u>No Effect on Scheduled Dates, Fixed Construction Price.</u>	50
26.3	<u>Survival of Indemnification.</u>	50
27.	TREATMENT OF CONFIDENTIAL INFORMATION	50
27.1	<u>Confidential Information.</u>	50
27.2	<u>Public Relation Matters.</u>	51
27.3	<u>Survival.</u>	51
28.	INVENTIONS AND LICENSES	51
28.1	<u>Intellectual Property Rights.</u>	51
28.2	<u>Survival.</u>	51
29.	ASSIGNMENT BY THE COUNTY	51
30.	ASSIGNMENT BY CONTRACTOR	52
31.	INDEPENDENT CONTRACTOR	52
32.	LIENS AND CLAIMS	52
33.	DISPUTE RESOLUTION PRIOR TO LITIGATION	52
33.1	<u>Dispute Resolution Procedure.</u>	52
34.	NOTICES AND COMMUNICATIONS	53
34.1	<u>Notices.</u>	53

35.	GENERAL REPRESENTATIONS AND WARRANTIES	53
35.1	<u>Contractor Representations and Warranties.</u>	53
35.2	<u>County Representations and Warranties.</u>	54
36.	PERFORMANCE SECURITY	55
37.	MISCELLANEOUS PROVISIONS.....	55
37.1	<u>Limit on County's Obligations.</u>	55
37.2	<u>No Personal Liability Against Agents of the County.</u>	55
37.3	<u>Severability.</u>	55
37.4	<u>Governing Law.</u>	55
37.5	<u>Survival.</u>	56
37.6	<u>Entire Agreement.</u>	56
37.7	<u>Modifications.</u>	56
37.8	<u>Waiver.</u>	56
37.9	<u>Records.</u>	56
37.10	<u>Liquidated Damages and Liability.</u>	56
37.11	<u>Priority of Documents.</u>	57
37.12	<u>Cooperation.</u>	57
37.13	<u>Rules of Interpretation.</u>	58

EXHIBITS

(This Document Must Be Downloaded Separately)

Exhibit A	Scope of Work and Specifications
Exhibit B	Landfill, Project Site and Collection and Recovery System
Exhibit C	Project Permits and Application
Exhibit D	Performance Test Procedures
Exhibit E	Progress Schedule
Exhibit F	Progress Payment Schedule
Exhibit G	Performance Guarantees
Exhibit H	Form of Performance Bond
Exhibit I	Invoice Form
Exhibit J	Form of Payment Bond
Exhibit K	Requirements of Mechanical Completion
Exhibit L	Operation and Maintenance Manual Requirements
Exhibit M	Detailed Plans
Exhibit N	County Rules
Exhibit O	Contractor Provided Insurance
Exhibit P	Subrecipient or Subcontractor Flowdown Requirements
Exhibit Q	Closeout Documents (Certificate of Substantial Completion, General Release, and Contractor's Affidavit)

**DESIGN AND CONSTRUCTION
AGREEMENT PA-XX-20XX**

THIS DESIGN AND CONSTRUCTION AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____, 20__, by and between **Howard County, Maryland** (the “**County**”), a body corporate and politic, and _____ (the “**Contractor**”), a ____ organized and existing under the laws of the _____ and duly qualified to do business in the State of Maryland.

WITNESSETH:

WHEREAS, the County owns the Landfill (defined below).

WHEREAS, Contractor desires to design, engineer, obtain permits, procure and supply materials and equipment, construct, start-up, and conduct performance tests for the Project (defined below) for the County.

WHEREAS, the County has selected Contractor in reliance upon Contractor’s skill, expertise and past experience to design, engineer, obtain permits, procure and supply materials and equipment, construct, start-up, and conduct performance tests for the Project in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the capitalized words and phrases used in this Agreement (including the Exhibits hereto) shall have the following meanings or meanings ascribed to them in other Sections of the Agreement:

Affected Party: Has the meaning given in **Section 22.1**.

Affiliate: With respect to any person, means any other person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person, whether through the ownership of voting securities or by contract or otherwise.

Agreement: This Design and Construction Agreement between the County and Contractor, including all Exhibits attached hereto, any subsequent written amendments, modifications and Changes In Work made in accordance with this Agreement.

Business Day: A calendar day excluding Saturdays, Sundays, County holidays and any other day that national banks located in the State of Maryland are not open for business. In the event that a payment obligation to be performed under this Agreement falls due on a Saturday, Sunday, County Holiday or a day on which national banks located in the State of Maryland are not open for business, the obligation shall be deemed due on the next Business Day thereafter.

Buydown Amount: Has the meaning given in **Section 14.3.1.**

Change In Law: Any Change in Law after the date of this Agreement affecting or related to the obligations to be performed by the Parties, (including, without limitation, the imposition of any new or additional permit requirements, provided that such new or additional permit requirements require Contractor to incur additional costs or delays in excess of the costs or delays required to be incurred by Contractor to comply with the requirements of the Project Permits as of the date hereof), provided that any such Change in Law that has been enacted prior to the date of this Agreement but that does not take effect until after the date hereof shall be deemed to be a requirement of existing Law and not a Change In Law for the purposes of this Agreement, and provided further, that a Change in Law affecting Taxes shall not be a Change In Law for the purposes of this Agreement.

Change Order: Any modification, alteration, addition or deletion of the Work authorized in writing by the County pursuant to **Article 16** and performed in accordance with this Agreement.

Change Order Estimate: Has the meaning given in **Section 16.1.2.**

Claimant: Has the meaning given in **Section 23.6.1.**

Commission or Commissioning: The verifying and documenting by Contractor that the constructed Project and all of its systems, assemblies, equipment, and all appurtenant facilities have been tested, and will operate on a continuous basis of production.

Confidential Information: Has the meaning given in **Section 27.1.**

Contract Deadline: The date that is ninety (90) days after the Scheduled Substantial Completion Date.

Contractor: _____, together with its successors and assigns permitted under this Agreement.

County: Howard County, Maryland.

County Indemnified Parties: Has the meaning given in **Section 25.1.1.**

County Rules: Has the meaning given in **Exhibit N.**

CPM: Has the meaning given in **Section 3.19.**

Day or day: A calendar day, unless otherwise specified.

Detailed Plans: Has the meaning given in **Exhibit M.**

Dispute: Any claim, controversy, disagreement or other matter in question between the Parties that arises out of or relates to the terms and conditions of this Agreement or with respect to the performance by the Parties of their respective obligations under this Agreement, including any claim for breach or repudiation thereof.

Documents for Approval: Has the meaning given in **Exhibit M.**

Dollars: Dollar amounts in U.S. dollars.

Event of Default: Has the meaning given in **Article 19**.

Final Completion: Completion of the Project in accordance with **Article 15**.

Final Completion Date: The date on which Final Completion occurs as specified in the Notice of Final Completion issued pursuant to **Section 15.2**.

Fixed Construction Price: The amount set forth in **Section 6.1** to be paid by the County to Contractor as full compensation for designing, engineering, permitting, procurement, construction, start-up and testing of the Project, as may be adjusted in accordance with this Agreement.

Float: Float or slack means the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities described in the Progress Schedule.

Force Majeure: Has the meaning given in **Article 22.2**.

Good Faith: Dealing with the other Party in a reasonable, honest and cooperative fashion. Good Faith shall include, without limitation, acting reasonably, acting diligently and timely, making commercially reasonable efforts and not withholding consents unreasonably.

Government Authority: All national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

Governmental Approvals: All permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Government Authority that are necessary for the performance of the Work.

Hazardous Materials: Any element, compound, mixture, solution, particle or substance:

(i) which is or may become dangerous, harmful or potentially dangerous or harmful to the health and welfare of life or the physical environment, such as, but not limited to, explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances and related materials, and including, without limitation (a) any substance or material included within the definitions of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “toxic substances”, “hazardous pollutants” or “toxic pollutants” in all applicable Laws of the United States or the State of Maryland and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 *et seq.* (“**CERCLA**”), the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 *et seq.* (“**RCRA**”), the Toxic Substances Control Act, 15 U.S.C. Sections 2601 to 2671, the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.*, and/or the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time (collectively, “**Environmental Laws**”), (b) any “PCBs” or “PCB items” as defined in 40 CFR Section 761.3, and (c) any “asbestos”, as defined in 40 CFR Section 763.83;

(ii) the presence of which requires investigation or remediation under any Law, policy or common law;

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated as a “Hazardous Waste” or “Hazardous Material” by any Government Authority of the United States or the State of Maryland; or

(iv) the presence of which on the Project Site causes or threatens to cause a nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Project Site or on or about the adjacent properties.

Interim Notice to Proceed: Has the meaning given in **Section 8.3**.

Landfill: The landfill owned by the County and located at 2350 Marriottsville Road, Marriottsville, Maryland 21104 in Howard County, Maryland, as described in **Exhibit B**, and commonly known as the Alpha Ridge Landfill.

Exhaust Gas: All gas exhausted from the Jenbacher J320 genset.

Landfill Gas: All gases resulting from the decomposition of refuse materials within the Landfill.

Landfill Flare System: The landfill gas flare system located at the Landfill, which includes two (2) blowers, control panels and electrical panels, one (1) enclosed flare designed to handle up to 2,230 cubic feet per minute of Landfill Gas with fifty percent (50%) methane content, propane pilot and compressed air nitrogen controlled valve systems and ancillary piping, valves, controls condensate collection, protective shelter and fenced enclosure.

Landfill Gas Collection and Recovery System: The Landfill Flare System and the landfill gas extraction, collection and recovery system located at the Landfill, as described in **Exhibit B**.

Landfill Gas to Energy System: The landfill gas to energy system, which is currently under design and construction, means one (1) containerized Jenbacher J320 engine/generator with moisture separator, coalescing unit, digital engine management, factory sound attenuation, radiators, exhaust silencer, landfill gas compression skid, switchgear, SCADA, and all other appurtenant systems. The generated electricity net of the on-site use will be sold on the PJM regional transmission grid after completion of the project which is anticipated in February 2012 for the Project to be online and operating.

Late Payment Rate: The prime rate of interest (sometimes referred to as the base rate) for corporate loans published by The Wall Street Journal, in the money rates section (or if The Wall Street Journal ceases publication of such a rate, an equivalent rate) as such rate may be in effect from time to time during the period the delinquent amount remains outstanding, plus one percent (1.0%).

Law(s): All federal, state and local constitutions, charters, acts, statutes, laws (including Environmental Laws, as defined in the “Hazardous Materials” definition), ordinances, codes, rules, regulations, orders and Governmental Approvals (including, without limitation, the Project Permits), or other legislative or administrative action of any agency, department, authority, political subdivision or other instrumentality, or final decrees, judgments or orders of a court, and the requirements set forth in the engineering and construction codes in each case applicable to Contractor, the County, the Work, the Landfill, or the design, engineering, procurement, construction, start-up, testing, operation or maintenance of the Project.

Mechanical Completion: Completion of the Project as described in **Section 12.3**.

Mechanical Completion Date: Has the meaning given in **Section 12.4**.

Notice: A written communication between the Parties that is required or permitted by this Agreement and conforms to the requirements of **Article 34**.

Notice of Final Completion: Has the meaning given in **Section 15.2**.

Notice of Mechanical Completion: Has the meaning given in **Section 12.4**.

Notice of Substantial Completion: Has the meaning given in **Section 13.3.7** and **13.4..**

Notice to Proceed: A written notice executed by an authorized officer of the County and delivered to Contractor, in accordance with **Section 8.1**, authorizing Contractor to commence the design, engineering, permitting, procurement, construction, start-up and testing of the Projects.

Operation and Maintenance Manual: A manual consisting of all plans, specifications, manuals, schedules, drawings and other documents (including, without limitation, copies of all warranties relating to equipment and all software access codes) required to be delivered hereunder and the materials described in **Exhibit L** that are necessary or customarily maintained for the ownership, operation and maintenance of the Project.

Party: either the County or Contractor; **Parties** means both the County and Contractor.

Performance Guarantees: Has the meaning given in **Exhibit G**.

Performance Test Plan: Has the meaning given in **Section 13.1**.

Performance Test Report: Has the meaning given in **Section 13.2**.

Performance Tests: The tests to be conducted by Contractor to demonstrate the performance of each of the Projects in accordance with the procedures set forth in **Article 13**, as described in **Exhibit D**.

Progress Payment Schedule: The schedule setting forth the payments of the Fixed Construction Price. Any Progress Payment Schedule modifications must be approved in writing by the County. The initial Progress Payment Schedule is included as **Exhibit F**.

Progress Schedule: The schedule submitted by Contractor setting forth the dates of performance by Contractor of the components of the Work related to the design, engineering, permitting, procurement, construction, start-up and testing of the Project, as modified from time to time by Contractor. Any Progress Schedule modifications to the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, or which substantially affects the County's obligations under this Agreement, must be approved in writing by the County. The initial Progress Schedule is set forth in **Exhibit E**.

Project: The Landfill waste heat recovery project as described in Exhibit A.

Project Director: Has the meaning given in **Section 3.15**.

Project Manager: Has the meaning given in **Section 2.2**.

Project Permits: All Governmental Approvals necessary for Contractor to perform the Work in accordance with applicable Laws, including, without limitation, those permits listed in **Exhibit C**.

Project Requirements: (a) Laws applicable to the performance of the Work, (b) this Agreement, (c) the Project Permits, (d) written recommendations and requirements of Contractor's Subcontractors with respect to the installation of such Subcontractor's equipment incorporated into the Work, unless exceptions are consistent with the prevailing standards and practices of the industry under existing conditions, (e) all operating manuals required under this Agreement or the components thereof, (f) the EBO (Equal Business Opportunity) Participation Plan, (g) the wage requirements set forth in Request for Proposal 14-2010 , and (h) Prudent Industry Practices.

Project Site: The location where the Landfill Gas to Energy System and the Landfill Gas Collection and Recovery System, the pipeline, and the maintenance building is located and the Project is to be constructed, as described in **Exhibit B**.

Prudent Industry Practices: The practices described in **Section 3.2**.

Punchlist: List of incomplete items required by the Work related to the design, engineering, permitting, procurement, construction, start-up and testing of the Project that do not affect the safe and commercial operation of the Project and which are to be completed by Contractor; provided, however, that the aggregate value of all Punchlist items may not exceed two percent (2%) of the Fixed Construction Price. No Work exceeding the limitation described in this definition may be included on the Punchlist and must be completed or partially completed so as to fall within the limitations described in this definition before Substantial Completion is achieved.

Punchlist Estimate(s): Has the meaning given in **Section 7.6.1**.

Replacement Contractor: Has the meaning given in **Section 19.2.2**.

Retainage Security: Has the meaning given in **Section 7.5**.

Scheduled Final Completion Date: The date that is sixty (60) days after the Substantial Completion Date, as such date may be adjusted pursuant to the provisions of this Agreement.

Scheduled Start-up Date: The date identified for the initiation of start-up activities in the Progress Schedule, as such date may be adjusted pursuant to the provisions of this Agreement.

Scheduled Substantial Completion Date: The date identified as the scheduled Substantial Completion Date in the Progress Schedule, as such date may be adjusted pursuant to the provisions of this Agreement; provided, however, that such date shall only be adjusted pursuant to a Change Order in accordance with the terms and conditions of this Agreement.

Scope of Work: Has the meaning given in **Exhibit A**.

Spare Parts: Has the meaning given in **Section 5.1.1**.

Specifications: The technical specifications relating to the Project set forth in **Exhibit A**, together with any additional specifications and drawings prepared by Contractor and submitted to the County for review and comment with respect to the Work, including, without limitation, all drawings, sketches, writings and calculations that define or describe the Work or the Project.

Start-up Plan: Has the meaning given in **Section 12.1**.

Subcontractors: Contractor's suppliers, vendors and subcontractors, of any tier, that perform the Work or otherwise assist Contractor in the performance of its obligations under this Agreement.

Substantial Completion: Substantial Completion of the Project in accordance with and to the extent set forth in **Article 13**.

Substantial Completion Date: With respect to the Project, the date on which Substantial Completion of the Project occurs pursuant to the terms and conditions of this Agreement.

System Checkout Packages: Has the meaning given in **Section 12.2.1**.

Tax or Taxes: All fees, taxes (including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any Government Authority or other taxing authority.

Warranties: The warranties of Contractor under **Article 17**.

Warranty Period: Has the meaning given in **Section 17.3**.

Work: All work, activities and other obligations to be performed by Contractor under this Agreement, including, without limitation, the design, engineering, permitting, procurement of equipment and materials, project management, construction, interconnection, interface engineering, start-up, supervision, testing, submittal of documentation, and other services, required by Contractor to achieve Final Completion of the Project in accordance with this Agreement.

2. RESPONSIBILITIES OF THE COUNTY

2.1 Access to Project Site.

Upon the date that the Interim Notice to Proceed or the Notice to Proceed is issued to Contractor, as applicable, the County shall (a) grant Contractor a license to use the Project Site for the exclusive purpose of performing the Work, and (b) permit Contractor and its Subcontractors ingress and egress to and from the Project Site for the purpose of performance of the Work, provided that the MDE (Maryland Department of the Environment) permit requirements are met. Contractor shall not have exclusive use of the Project Site and shall not use or allow the Project Site (or any part thereof) to be used for any illegal, unlawful or improper purpose. Contractor shall be responsible for the maintenance and improvement of all means of ingress and egress to and from the Project Site for the purpose of performing the Work.

2.2 Project Manager.

The County shall designate a person (the “**Project Manager**”) authorized by the County to act as a single point of contact for Contractor with respect to the prosecution of the Work. The Project Manager shall have full authority to act on behalf of the County in connection with this Agreement (but not to modify or amend it) except as otherwise expressly stated herein or otherwise provided in a Notice from the County to Contractor. The County may from time to time replace its Project Manager upon Notice thereof to Contractor. The Project Manager or the County may, by Notice to Contractor, appoint one (1) or more persons to act as the Project Manager’s representative and may from time to time by further Notice change such appointment.

2.3 Payments.

The County shall make, or cause to be made, payments to Contractor in respect of the Fixed Construction Price in accordance with applicable provisions of this Agreement.

2.4 Actions by the County.

The County may cause any of its rights or obligations hereunder to be exercised or performed by one (1) or more designees or appointees specified in a Notice to Contractor, which Notice shall identify the specific designee or appointee, designate the scope of such person's or entity's authority and the matters concerning which such person shall have authority to act on behalf of the County. The County may amend, supplement or terminate any such appointment or designation, or the scope and authority thereof by Notice to Contractor.

2.5 Prudent Industry Practices.

In the exercise of its rights hereunder, the County shall exercise its discretion and otherwise act in accordance with Prudent Industry Practices. Subject to Contractor's fulfillment of its obligations hereunder, unless otherwise specifically set forth herein, all County approvals and responses required hereunder that materially impact the CPM schedule precedence relationship, as identified in Contractor's submission or request to the County, shall be performed within fourteen (14) calendar days of the date of Contractor's submission or request with respect thereto.

3. RESPONSIBILITIES OF CONTRACTOR

3.1 Scope of Work; Applicable Standards.

3.1.1 Contractor shall perform and prosecute all Work, and perform its obligations hereunder and exercise its rights hereunder, in Good Faith and in accordance with the Scope of Work, the Specifications and the other terms and provisions of this Agreement and in compliance with all Project Requirements, using methods and equipment that are accepted as Prudent Industry Practices. Contractor shall conduct the Performance Tests and meet the Substantial Completion Date by the Scheduled Substantial Completion Date and the Final Completion Date by the Scheduled Final Completion Date. Contractor shall design, engineer, permit, procure, construct, start-up, and test the Project lawfully and safely, in each case, using qualified, competent and, where necessary, licensed personnel. Notwithstanding any other provision of this Agreement to the contrary, Contractor has reviewed and for all purposes adopted the information contained in the Scope of Work, Specifications and all other provisions of this Agreement as its own and shall not be entitled to any relief or recovery as a result of (a) any information contained therein having been provided by the County or, (b) any error or omission therein, or (c) any design, engineering, material, facilities, suppliers or other materials or actions being required by the County as provided in the Scope of Work, Specifications and other provisions of this Agreement. Contractor shall provide directly or through Subcontractors all services, labor, tools, supplies, materials, testing, supervision and equipment required for the performance of the Work.

3.1.2 Contractor has included within the Fixed Construction Price the cost to complete the entire Scope of Work. Items need not be specifically listed in this Agreement or the Exhibits in order to be deemed to be items within the Scope of Work. Any item indicated in this Agreement or the Exhibits, reasonably inferable therefrom or incidental thereto or required in accordance with the Project Requirements is to be considered as part of the Scope of Work. In addition, the Scope of Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the Performance Guarantees. As a result, Contractor hereby waives all claims for an increase in the Fixed Construction Price or an extension of the Scheduled Substantial Completion Date or the Scheduled Final Completion Date based, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor,

material, equipment, operation or management is beyond the Scope of Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is indicated in this Agreement or the Exhibits or other instruments of service prepared in connection with this Agreement or the Exhibits, reasonably inferable therefrom or incidental thereto or required in accordance with the Project Requirements.

3.2 Project Requirements.

Contractor shall perform the Work so that it satisfies all Project Requirements, including applicable Laws and applicable design, engineering, construction, operation, maintenance and other standards of **Prudent Industry Practices**, which are defined as those practices, methods and equipment, in effect from time to time for performance of the Work that are commonly used to design, engineer, construct, operate and maintain waste heat recovery facilities, in each case, lawfully and with safety, dependability, efficiency and economy (provided that the requirements of dependability, efficiency and economy as described above are not intended to expand the Scope of Work). The County makes no acknowledgement that the design details specifically set forth in the Scope of Work satisfy Prudent Industry Practices or that the design details set forth in the Scope of Work constitute all or sufficient details necessary to satisfy Prudent Industry Practices.

3.3 Project Permits.

3.3.1 Contractor shall obtain all Project Permits and shall use reasonable efforts to maintain all Project Permits (once the Project Permits have been obtained).

3.3.2 Contractor shall prepare and process applications for all Project Permits listed in **Exhibit C**, and shall use reasonable efforts to maintain all Project Permits once they have been obtained).

3.3.3 Prior to the submission of any Project Permit application to a Government Authority, Contractor shall submit such application to the County for review and comment. Project Permits, as determined by the County and for which Notice of such determination is provided to Contractor, shall be applied for and issued in the names of the County.

3.3.4 Contractor shall be responsible for all actions necessary to (a) obtain or prepare and process applications for Project Permits, as set forth in **Sections 3.3.2 and 3.3.3** above, and (b) maintain the Project Permits.

3.3.5 Contractor shall be responsible for all damages, fines, and penalties that may arise (including, but not limited to, those that the County pays or becomes liable to pay) because of (a) Contractor's failure to (i) obtain any Governmental Approval or Project Permit, or (ii) promptly prepare and process applications for Project Permits listed in **Exhibit C**, or (b) the noncompliance by Contractor with any Governmental Approval or Project Permit applicable to the Work, irrespective of the party that is required to obtain such Governmental Approval or Project Permit. The Work includes all Contractor activities necessary to engineer, design, procure, construct, start-up, and test the Project in accordance with the Project Permits and, except as may otherwise specifically be provided for herein, the Fixed Construction Price shall not be adjusted in respect of the requirements of the Project Permits.

3.3.6 Contractor shall notify the County within one (1) Business Day of any notice of violation or similar communication (and any written or verbal communications related thereto) regarding the Project received from any Government Authority. Contractor shall provide the County with prompt notice of any site visits by representatives of any Government Authority and any Government Authority written or verbal communications.

3.3.7 In connection with the expiration or termination of this Agreement, Contractor shall cooperate with the County, at Contractor's cost and expense, in effectuating the transfer or assignment of the Project Permits, as the County may request in a Notice to Contractor.

3.3.8 Contractor shall prepare and process all Project Permits in accordance with Prudent Industry Practices and the Project Schedule. Subject to the foregoing, if a Government Authority fails to timely issue a Project Permit or other required Governmental Approval by the late finish date for the Project Permit or Governmental Approval, as shown in the CPM schedule, then such event shall qualify as a Force Majeure if the requirements of **Section 22.2(E)** are satisfied.

3.4 Hazardous Materials.

Contractor shall provide Notice to the County immediately upon encountering any Hazardous Materials in performing the Work. Contractor shall contain and remove all Hazardous Materials that were introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder and dispose of such Hazardous Materials in accordance with applicable Laws. All costs associated with the containment, removal, storage and disposal of such Hazardous Materials shall be paid by Contractor without reimbursement from the County.

3.5 Utility Services and Operating Consumables.

Contractor shall provide and pay the costs for all utility services (including, without limitation, water and electricity) and all operating consumables necessary to perform the Work.

3.6 Sanitary Conditions.

Contractor shall maintain the Project Site free of waste material and rubbish and clear the Project Site of temporary structures, surplus material, equipment and tools upon completion of the design, engineering, procurement, construction, start-up and testing of the Project. Contractor shall return any areas of the Project Site disturbed by Contractor or its Subcontractors to a condition that is the same or better than the area's condition prior to such disturbance.

3.7 Price Breakdown.

Contractor shall provide a Fixed Construction Price breakdown as reasonably required by the County for its fixed asset records. The County shall maintain all information regarding Contractor's costs disclosed pursuant to this **Section 3.7** in accordance with **Section 27.1**.

3.8 Protection of Work.

Contractor shall provide all necessary safeguards for the protection and maintenance of the Work, the Project, the Project Site, and of all persons and other property related thereto.

3.9 Handling and Storage of Materials and Equipment.

Contractor shall arrange for complete and safe handling and storage of all materials, equipment and construction equipment required to accomplish the Work, including, but not limited to, inspection, expediting, shipping, unloading, receiving, customs clearance and claims.

3.10 Quality Assurance.

Contractor shall use effective quality assurance programs in performing the Work which reflect Prudent Industry Practices. Within thirty (30) days after the date that the Notice to Proceed is issued to Contractor, Contractor shall provide to the County a written program describing the quality assurance programs and procedures to be used by Contractor in the performance of the Work. The County shall have the right to review and comment on such program within ten (10) Business Days following receipt of the complete program and all reasonable comments by or on behalf of the County shall be incorporated in Contractor's quality assurance program. The County's approval of Contractor's quality assurance program shall not be unreasonably withheld, conditioned or delayed. Neither review, comment upon, approval or rejection of, nor the failure of the County to review, comment upon, approve, or reject all or any part of Contractor's quality assurance program shall (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

3.11 Compliance with County Rules.

Contractor and its Subcontractors and their respective employees, agents and representatives shall comply with the County Rules at all times regarding activities on the Project Site (including restrictions to ingress and egress) and coordinate its activities with any person performing work or undertaking activities at the Project Site, including, without limitation, contractors or subcontractors performing work for or on behalf of the County.

3.12 Assistance with Government Authorities.

Contractor shall provide such reasonable assistance as is required by the County in dealing with the County and any other Government Authority in any and all matters relating to this Agreement, the Project, the Project Site or the performance by Contractor of the Work.

3.13 Cooperation with Engineer and Consultants.

Contractor shall cooperate with any engineer or consultant retained by the County to review design materials, information regarding costs, perform inspections or tests of the Work, witness tests and review test results, to perform any of the County's obligations hereunder, as the County may determine in its sole discretion, and any other matters relating to the Work.

3.14 Public Announcements.

Contractor shall obtain the County's prior written approval of the text of any announcement, publication, photograph or other type of communication concerning the Work prior to the dissemination or release of same by Contractor or its Subcontractors; provided, however, that the County's prior written approval shall not be required for any communication regarding the Work that is required to be made by Contractor pursuant to applicable Law and Contractor shall notify the County of such communication as soon as practicable.

3.15 Contractor Staff.

Subject to the County's approval, which approval shall not be unreasonably withheld, conditioned or delayed, Contractor shall designate an individual (the "**Project Director**") who shall have overall responsibility for the prosecution of the Work and shall be authorized to act on behalf of Contractor. The Project Director shall act as a single point of contact in all matters on behalf of Contractor and shall

oversee the design, engineering, procurement, construction, start-up, and testing of the Project. The Project Director shall have full authority to act on behalf of Contractor in connection with this Agreement (but not to modify or amend it). Contractor may from time to time replace its Project Director upon Notice thereof to the County.

3.16 County Requirements.

Contractor shall perform the Work in accordance with the Equal Business Opportunity requirements set forth in the Request for Proposal.

3.17 Liens.

Contractor shall keep the Project, the Landfill and the Project Site free of all mechanics' liens, suppliers' liens, materialmen's liens and all other liens or claims arising from, by or through Contractor's acts or arising out of the Work and make all payments due to Subcontractors performing any part of the Work on behalf of Contractor as and when due; provided, however, that Contractor shall have the right to cause any such liens to be vacated by posting bonds in the event that liens registered against the Project, the Landfill or the Project Site relate to claims which Contractor disputes.

3.18 Progress Reports and Meetings.

3.18.1 Prior to the Final Completion Date, Contractor shall issue to the Project Manager a monthly progress report regarding the development of the Projects in a format acceptable to the Project Manager.

3.18.2 Upon the Project Manager's request, Contractor shall attend periodic progress meetings with the Project Manager and others designated by the County and respond to inquiries at such meetings regarding progress of the Work. Contractor shall arrange for Subcontractors to attend such progress meetings, if requested by the Project Manager. In addition to the reports described in **Section 3.18.1** and the other provisions of this Agreement, Contractor shall provide such additional information and reports concerning the Work as may be reasonably requested by the County.

3.19 CPM Schedule & Schedule of Values.

Contractor shall, within ten (10) Business Days after execution of this Agreement, submit to the County for review a Critical Path Method ("CPM") schedule in Microsoft Project format for completion of the Work related to the design, engineering, permitting, procurement, construction, start-up and testing of the Project, including precedence relationship and Float for major activities and milestones in reasonable detail. The County shall provide comments to Contractor within ten (10) Business Days after receipt of the complete draft CPM schedule, and Contractor shall include in the final CPM schedule all reasonable comments of the County. Contractor shall submit such final CPM schedule to the County within ten (10) Business Days after receipt of comments on the draft CPM schedule from the County. It is a requirement of the federal grant that the Notice to Proceed be issued no later than May 19, 2011 and the Final Completion Date be no later than November 19, 2012.

Contractor shall, within ten (10) Business Days after execution of this Agreement, submit to the County for review a schedule of values which total to the Fixed Construction Price and reflects the completion of the Work related to the design, engineering, permitting, procurement, construction, start-up and testing of the Project. The County shall provide comments to Contractor within ten (10) Business Days after receipt of the complete schedule of values, and Contractor shall include in the final schedule of values all reasonable comments of the County. Contractor shall submit such final schedule of values to

the County within ten (10) Business Days after receipt of comments on the draft schedule of values from the County.

3.20 Performance Tests.

Contractor shall perform the Performance Tests in accordance with **Article 13.**

3.21 Security.

When Contractor begins on-site Work activities at the Project Site or has material or equipment delivered to the Project Site, Contractor shall provide reasonable and customary security for the Project Site to ensure that the Project Site is secure and to prevent vandalism, theft and damage to the Project, the Project Site, or material, equipment and personnel located on the Project Site.

3.22 Geotechnical Conditions.

In the event that Contractor encounters any unknown surface, subsurface or latent physical conditions at the Project Site, such conditions shall be addressed in accordance with **Section 4.2.3.**

3.23 Operation and Maintenance Manual.

3.23.1 Contractor shall, at least forty-five (45) days before the start of the Performance Tests, prepare and make available to the County, for review and comment, an electronic version and three (3) paper bound copies of the Operation and Maintenance Manual (excluding Detailed Plans showing “record” conditions which must be made available before Final Completion). Within thirty (30) days after receipt of the complete draft Operation and Maintenance Manual, the County shall provide Contractor with its written comments thereto and Contractor shall include any reasonable comments provided by the County in the final Operation and Maintenance Manual. Before the Final Completion Date, Contractor must furnish the County with a final electronic version and three (3) final paper bound copies of the Operation and Maintenance Manual.

3.23.2 Prior to the Final Completion Date, Contractor shall maintain and update the Operation and Maintenance Manual to reflect its experience in starting up the Project.

3.24 Notification of Potential Delays or Adverse Effects.

Contractor shall promptly provide Notice to the County of any occurrence that Contractor has reason to believe will adversely affect (a) the completion of the Project in accordance with the Progress Schedule, (b) the operation or maintenance of the Project, (c) the Project Site, or (d) the Landfill. Contractor shall specify in such Notice the corrective action planned by Contractor to overcome the adverse effect(s).

3.25 Site Safety Program.

The safety of Contractor, Subcontractors and their employees, agents, representatives and invitees and any other person who enters the Project Site for any purpose relating to Contractor’s carrying out its obligations under this Agreement shall be Contractor’s responsibility. Contractor shall initiate and maintain safety precautions and programs to conform with applicable Laws to protect against and prevent injury to persons or damage to property on, about or adjacent to the Project Site and shall incorporate all such safety precautions and programs in a written safety program manual, which safety program manual shall be provided to the County for its review and comment within thirty (30) days after the date hereof and all comments by or on behalf of the County shall be incorporated in Contractor’s safety program

manual. The County's approval of Contractor's safety program manual shall not be unreasonably withheld, conditioned or delayed. Neither review, comment upon, approval or rejection of, nor the failure of the County to review, comment upon, approve, or reject all or any part of Contractor's safety program manual shall (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price. Contractor shall exercise reasonable commercial efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work.

Contractor shall appoint and maintain a qualified individual as the "Safety Compliance Officer" and shall assure that such person or designee is on-site at all times when the Work is conducted. The County reserves the right to audit the Contractor's safety related records at any time.

Contractor shall provide all "competent persons" as required by MOSH standards for the Work. Contractor shall report to the County any governmental inspections or inquiries at the Project Site. The reason for the inspection and the results of the inspection shall be shared with the County as soon as possible but no later than the next Business Day.

Contractor shall comply with all safety-related policies as requested by the "Howard County Safety Manager" or designee. Safety violations shall be corrected immediately or operations terminated until compliance with the specific standards are met. Repeated violations of the same type shall result in termination of the offending Contractor's or subcontractors' work

3.26 Compliance with Applicable Laws.

Contractor shall ensure that it, its employees, agents and invitees and its Subcontractors and their employees, agents and invitees, during performance of any of the Work, comply with all applicable Laws in effect from time to time, including without limitation, Federal OSHA , MOSH, and County ordinances and codes, uniform fire codes, DOT regulations and facility rules and regulations.

3.27 Delays.

The County may provide Notice to Contractor if the rate of progress of completion of the Project is too slow, in accordance with the Progress Schedule, to meet the Scheduled Substantial Completion Date or the Scheduled Final Completion Date. Following receipt of such Notice, Contractor shall take such steps as are necessary and as are approved by the Project Manager to remedy or mitigate the likely delay. Contractor acknowledges that the implementation of such steps may result in additional costs and expenditures and agrees that it shall not be entitled to any adjustment of the Fixed Construction Price, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date or other Change Order for taking such steps; provided, however, that if Contractor Disputes the necessity of any such steps and the Dispute is resolved in favor of Contractor, then Contractor shall not be obligated to take such steps or, if Contractor has already taken such steps, Contractor shall be entitled to an adjustment in the Fixed Construction Price as though such steps were a Change Order ordered by the County and, if applicable, an adjustment in the Scheduled Substantial Completion Date and/or the Scheduled Final Completion Date.

3.28 Insurance.

Contractor shall obtain and maintain insurance in accordance with **Article 23.**

3.29 Nondiscrimination.

By signature hereof, Contractor affirms that it accepts and will conform to the Howard County Equal Business Opportunity (EBO) Program and the Affirmative Action Program, as provided under Howard County Code § 4.122 and § 12.200, respectively, as amended, which state in pertinent part that:

The County expects that the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or age. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, creed, color, national origin, sex or age.

Contractor certifies that it now complies and will continue to comply with all Laws pertaining to equal opportunity and equal employment practices.

3.30 Energy Efficiency And Conservation Block Grant Program.

By signature hereof, Contractor acknowledges that the County has received a grant for a portion of the Contract funds from the Department of Energy of the United States of America's Energy Efficiency And Conservation Block Grant Program. Further, Contractor hereby affirms that it accepts and will conform to the "Subrecipient or Subcontractor Flowdown Requirements" of the "Subrecipient or Subcontractor Flowdown Requirements" of the Energy Efficiency And Conservation Block Grant Program as set forth in Exhibit P of this Agreement. In the event that there is a conflict between the terms of this Agreement and the terms of the "Subrecipient or Subcontractor Flowdown Requirements" for a part of the Work which is being funded by the described grant, then the "Subrecipient or Subcontractor Flowdown Requirements" shall control.

4. CONTRACTOR REPRESENTATIONS CONCERNING THE WORK & PROJECT SITE

4.1 Skills, Expertise and Capacity.

Contractor represents and agrees that it has the required skills, expertise and capacity to perform, and shall diligently perform, the Work in a timely and professional manner utilizing sound engineering principles, project management procedures and supervisory procedures in accordance with this Agreement and all applicable Project Requirements.

4.2 Project Site.

4.2.1 Contractor represents and agrees that it has inspected the Project Site and surrounding locations and has reviewed information provided by the County relating to the Landfill Gas Collection and Recovery Systems, the Landfill Gas to Energy System, the Project Site, and surrounding locations, and is familiar with the conditions thereof and accepts the existing conditions of the Landfill Gas Collection and Recovery Systems, the Landfill Gas to Energy System, the Project Site, and surrounding locations for the performance of the Work.

4.2.2 Contractor agrees to maintain the Project Site and all structures, facilities, improvements or fixtures located thereon in a condition and state of repair equal to or better than that, as of the date hereof. Contractor shall be responsible for any damage to the Project Site and all structures, facilities, improvements or fixtures located thereon due to the acts or omissions of Contractor, any Subcontractor or their assigns, employees, agents, officers and directors or anyone else acting for or on behalf of Contractor, any Subcontractor or their Affiliates, successors or assigns. In the event of such damage, Contractor shall make the necessary repairs or replacement to the satisfaction of the County. Contractor acknowledges and agrees that upon the expiration or termination of this Agreement, the Project Site and all structures, facilities, improvements or fixtures located thereon shall be returned to the County in the same condition as they were as of the date hereof, with reasonable wear and tear excepted.

4.2.3 In the event Contractor encounters unknown surface, subsurface or latent physical conditions at the Project Site (including, but not limited to, man-made obstructions, geotechnical conditions, Hazardous Materials and archeological remains), Contractor shall give immediate Notice of the nature and extent of such conditions to the County. The County shall promptly investigate the conditions and direct Contractor as to how Contractor shall proceed.

4.2.4 Contractor is not entitled to an adjustment of the Fixed Construction Price or an extension of the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, nor shall a Force Majeure occur (except in the circumstances described in this **Section 4.2.4**) because of (a) the presence of Hazardous Materials at the Project Site which were introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder, nor (b) if any adverse surface condition at the Project Site or any adverse subsurface condition of or at the Project Site is discovered, which subsurface condition was reasonably foreseeable or identified by Contractor or its Subcontractors after inspection of the Project Site and surrounding locations and review of information provided by the County relating to the Project Site or does not have a material and adverse effect on Contractor's cost or time for performance of the Work. The discovery of any adverse subsurface geotechnical conditions at the Project Site (including, but not limited to, Hazardous Materials, which were not introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder, and archeological remains) that (x) were not reasonably foreseeable or identified by Contractor or its Subcontractors in accordance with the foregoing sentence, and (y) have a demonstrated material and adverse effect on Contractor's cost or time for performance of the Work shall constitute an event of Force Majeure in accordance with the provisions of **Article 22**.

5. SPARE PARTS

5.1 Spare Parts.

5.1.1 At least ninety (90) days prior to Mechanical Completion, Contractor shall provide the County with a recommended list of spare parts for operation and maintenance of the Project, based in part upon equipment manufacturer recommendations. Within thirty (30) days following receipt of the complete proposed spare parts list, the County shall provide comments thereto to Contractor, which comments shall be reflected in the final list of spare parts for the Project (the "**Spare Parts**"). Contractor shall purchase the Spare Parts designated by the County on the best available terms for delivery prior to Substantial Completion. The County shall reimburse Contractor for the actual purchase price of the Spare Parts (including all rebates and discounts). Contractor shall not be entitled to any commission, markup, adder or other payment in connection with the purchase of Spare Parts pursuant to this **Section 5.1**.

5.1.2 Contractor may use any Spare Parts item in performing its obligations hereunder but shall replace each such item, at its sole cost and expense and without reimbursement from the County, as soon as reasonably practicable under the circumstances but prior to Final Completion.

6. FIXED CONSTRUCTION PRICE

6.1 Fixed Construction Price.

The Fixed Construction Price of _____ Dollars (\$ _____), as set forth in this **Section 6.1**, as adjusted pursuant to **Section 6.4** and as further adjusted for the purchase of Spare Parts and by any fully executed Change Order Form, in accordance with **Article 16**, constitutes the total compensation to Contractor for the design, engineering, permitting, procurement, permitting, construction, start-up and testing of the Project under this Agreement. Subject to the provisions of this

Agreement, Contractor's actual cost to perform such Work in accordance with this Agreement shall be at the risk of Contractor, who hereby acknowledges that it has obtained all information reasonably available and taken account of all circumstances reasonably foreseeable which may affect such cost before agreeing to the Fixed Construction Price.

6.2 Taxes.

6.2.1 The Fixed Construction Price reflects the payment by Contractor of all Taxes incurred in connection with the Work. Notwithstanding anything herein to the contrary, the Fixed Construction Price shall not be adjusted for a Change in Law affecting Taxes or for any Taxes imposed with respect to any design, equipment, testing, materials, labor or services that are part of the Work.

6.2.2 Contractor shall take all actions reasonably requested by the County to avail itself of and to maximize any exemptions or discounts which are available with respect to any Taxes incurred in connection with the Work or the Project, including, without limitation, completing required documentation and providing information related to the Work or the Fixed Construction Price.

6.3 Adjustments to Scheduled Dates.

Any extensions of time or adjustment of the Scheduled Substantial Completion Date or the Scheduled Final Completion Date shall be granted only to the extent such extension is warranted as a result of a Change Order, a suspension of Work or a Force Majeure occurrence as provided in this Agreement and then only for the actual period of time which an activity is delayed or suspended at the time Contractor was directed to proceed with a change, to suspend Work or was otherwise delayed, as shown on the most current CPM schedule.

7. TERMS OF PAYMENT

7.1 Fixed Construction Price Invoices.

7.1.1 Contractor shall submit a Fixed Construction Price invoice to the County in the form specified in **Exhibit I**. Each such invoice shall properly represent the earned value that has been achieved during preceding months and which have not been the subject of a previous invoice.

7.1.2 With each Fixed Construction Price invoice, Contractor and each of its Subcontractors shall submit a partial lien waiver to the County for all Work related to the design, engineering, permitting, procurement, construction, start-up and testing of the Project that has been completed and materials provided for which payment is requested. Such lien waivers shall be contingent upon receipt of the invoice amount from the County and represent that Contractor and each of its Subcontractors have made all payments due to all subcontractors for such Work and materials for which payment has previously been made to Contractor. If any Dispute arises with respect to the payment of any such subcontractors, then Contractor, or its Subcontractors, shall provide to the County evidence of the payments that have been made to such subcontractors. If Contractor or any Subcontractor is unable to provide the lien waiver with respect to any amount, Contractor, or such Subcontractor, may substitute evidence that a bond has been posted in court so as to vacate any such lien in respect of such amount.

7.2 Payment of Invoices.

7.2.1 The County shall, within fifteen (15) Business Days after receipt of a Fixed Construction Price invoice from Contractor pursuant to **Section 7.1.1**, determine whether (a) the earned value covered by the invoice has been met, (b) the Work performed conforms with the requirements of this Agreement, and (c) the invoice and any required backup information have been properly submitted.

If the County determines that any of the foregoing requirements have not been satisfied with respect to a Fixed Construction Price invoice, the County shall provide Notice to Contractor of such determination within fifteen (15) Business Days after receipt of such invoice from Contractor. The County shall not have any obligation hereunder to pay, or cause to be paid, such Disputed portions of any invoice unless and until the Parties reach a mutual agreement regarding such Disputed portions or, in absence thereof, there is an adjudication of the dispute. Notwithstanding the foregoing, in no event shall the County's determination described in this **Section 7.2.1** or payment of any amount hereunder constitute or be deemed a waiver of any provision of this Agreement, and the County shall have the right to enforce this Agreement against Contractor notwithstanding any such determination or payment if the County subsequently determines for any reason that any determination or payment of an invoice under this **Section 7.2.1** was erroneous. Subject to such determination, and except for Disputed portions of any Fixed Construction Price invoice, the County shall pay, or cause to be paid, to Contractor, within forty-five (45) days after receipt by the County of Contractor's invoice, one hundred percent (100%) of the invoiced amount minus the retainage percentage set forth in **Section 7.5** (unless Contractor has provided Retainage Security for such retainage) minus any Disputed portion of such invoice minus any amounts that the County is entitled to withhold hereunder minus any amounts due from Contractor to the County that are outstanding hereunder.

7.3 Withholding Payment.

The County, based on its estimate, may withhold, or cause to be withheld, such portion of any payment to such extent as may be necessary to protect the County from loss due to Contractor's failure to comply with any of the items set forth in clauses (a), (b), and (c) of **Section 7.2.1** and in respect to the following:

- (a) Defective Work not corrected;
- (b) Claims filed against the County, the Project, or the Project Site (or reasonable evidence indicating probable filing of such claims) arising from Contractor's actions or inactions in connection with the performance of the Work, other than claims for which liens have been filed against the Project or the Project Site that Contractor has bonded or otherwise secured or caused to be vacated in accordance with this Agreement and applicable Law;
- (c) Failure of Contractor to make payments that are due and owing in respect of material or labor or other obligations incurred as a result of activities covered by this Agreement, unless Contractor has Disputed such payments and, if any lien is filed with respect thereto, Contractor has posted a bond or other security against such lien or otherwise caused such lien to be vacated in accordance with this Agreement and applicable Law;
- (d) Damages or any other amounts owed by Contractor to the County under this Agreement for which the County has not been paid; and
- (e) Failure of Contractor to carry out the Work in accordance with the Progress Schedule and this Agreement.

7.4 Notice of Delayed Payment.

The County shall use reasonable efforts to advise Contractor in writing within fifteen (15) Business Days after receipt of Contractor's invoice of any evidence leading to a possible delayed payment of any portion of an invoice. Upon receipt of such Notice, Contractor shall promptly take all steps available to remedy all conditions identified by the County leading to such claims. Subject to a mutually agreed upon resolution of the County's claims or, in the absence thereof, an adjudication thereof, payment

of the Disputed portion of Contractor's invoice shall be made by the County within ten (10) Business Days following the date of such agreement or adjudication.

7.5 Retainage.

With respect to each Fixed Construction Price invoice, the County shall retain five percent (5%) as retainage hereunder, which retainage shall be held by the County and paid and/or applied pursuant to **Section 7.6.1** or as provided in **Article 13**. Contractor may provide a letter of credit or other direct pay alternate security, in form and substance acceptable to the County in its sole discretion, as an alternative to the withholding of retainage by the County hereunder ("**Retainage Security**"), which Retainage Security shall be increased with respect to each Fixed Construction Price invoice in an amount determined in accordance with this **Section 7.5** and, in such event, any reference to the payment of retainage to Contractor hereunder shall be deemed to mean a reduction on a dollar for dollar basis of the amount of Retainage Security maintained for the benefit of the County.

7.6 Release of Retainage.

7.6.1 Upon achievement of Substantial Completion pursuant to **Article 13**, Contractor may submit to the County an invoice for the retainage described in **Section 7.5**, less an amount equal to two and five tenths (2.5) times the total Punchlist Estimate plus any amounts owed by Contractor to the County hereunder. The County shall pay, or cause to be paid, such retainage amount to Contractor within forty-five (45) Business Days after the submission of such an invoice for retainage by Contractor; provided, however, that the County shall not be obligated to make such payment, or cause such payment to be made, until and unless (a) the County has received from Contractor and each Subcontractor the data, drawings and materials specified in **Section 10.7** and final lien waivers, and (b) Contractor has posted a bond against any liens then filed against the Project or the Project Site. The County shall have the right to apply any amount of such retainage or draws under Retainage Security (as the case may be) as an offset against any amount due from Contractor to the County in connection with any obligation of Contractor to the County under this Agreement. If Contractor is not entitled to full payment of the retainage at such time due to the existence of Punchlist items then the County shall estimate the cost to complete the Punchlist items ("**Punchlist Estimate**").

7.6.2 Contractor shall diligently pursue the completion of all Punchlist items in accordance with this Agreement. As Contractor completes Punchlist items, Contractor may submit an invoice to the County for retainage for such Punchlist items completed in the amount equal to the Punchlist Estimate applicable to such Punchlist items completed, multiplied by two and five tenths (2.5), which invoice shall be paid to Contractor within forty-five (45) Business Days after the County's receipt thereof unless the County Disputes all or a part of such invoice, in which case the County shall pay the undisputed portion of such Work and seek resolution of the Disputed portion in accordance with this Agreement. Retainage or Retainage Security provided for any Punchlist items not completed on or before the Final Completion Date may, at the County's sole option, be permanently retained or drawn upon and applied (as the case may be) by the County, and Final Completion shall be deemed to have occurred and Contractor shall be released from completion of such Punchlist items. Notwithstanding the foregoing, such release shall not relieve Contractor from fulfilling any other requirements for Final Completion, as set forth in **Section 15.1.2**, other than Punchlist items.

7.6.3 If there are outstanding Contractor claims against the County, such claims shall not delay or prevent the reduction in the amount of Retainage Security otherwise due as provided in **Section 7.6.2**, provided such claims have been made in writing and are outstanding at the time the reduction in the amount of Retainage Security is requested. If there are outstanding County claims against Contractor which have been made in writing at the time the reduction in the amount of Retainage

Security (as the case may be) is requested, then the County may retain all or a portion of such amount as necessary to ensure full recovery by the County of such claim.

7.7 Release of Liens.

In the event that any Subcontractor files a lien against the Project, the Project Site, or the County, at any time, including, without limitation, after the reduction in the amount of Retainage Security (as the case may be) of Contractor as described in **Section 7.6**, then Contractor shall, within thirty (30) days of Notice thereof, post a bond against such lien or otherwise cause such lien to be vacated in accordance with applicable Law. As a condition to the reduction in the amount of Retainage Security (as the case may be), Contractor shall furnish final waivers of lien from each of its Subcontractors and evidence that any liens previously filed by any Subcontractor have been vacated, satisfied or otherwise terminated without liability to the County. Notwithstanding the foregoing, with respect to any lien against the Project, the Project Site, or the County, as to which Contractor cannot provide a lien waiver, Contractor shall furnish evidence that it has posted bonds in accordance with applicable Law so as to vacate such liens.

7.8 County's Right of Offset.

The County may offset any amount due and owing to the County by Contractor under this Agreement against any amount due or to become due from the County to Contractor under this Agreement; provided that the failure of the County to offset such liability against amounts due to the County shall in no way limit or restrict the right of the County to recover such amounts due to it from Contractor.

7.9 No Effect on Scheduled Dates or Fixed Construction Price.

Subject to **Section 19.4**, unless specifically agreed to in writing by Contractor and the County, no action taken (or failed to be taken) by Contractor or the County pursuant to this **Article 7** shall (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, or (b) result in any adjustment of the Fixed Construction Price.

8. COMMENCEMENT OF THE WORK

8.1 Notice to Proceed.

Prior to the issuance of any Interim Notice to Proceed or Notice to Proceed by the County, as applicable, Contractor shall (a) obtain the insurance policies required pursuant to **Article 23** and provide the County with insurance certificates thereof, and (b) provide the County with any documents or agreements reasonably requested by the County pursuant to this Agreement.

8.2 Priority of Work.

Within three (3) Business Days after the date that the Interim Notice to Proceed or Notice to Proceed is issued to Contractor, as applicable, Contractor shall commence and diligently pursue the Work related to the design, engineering, permitting, procurement, construction, start-up and testing of the Projects, assigning to it a priority that will permit such Work to be completed in accordance with the Progress Schedule and **Section 3.1.1**. Contractor understands and agrees that time is of the essence with respect to execution of the Work.

8.3 Interim Notice to Proceed.

Notwithstanding anything contained herein to the contrary, the County may issue to Contractor an authorization for Contractor to begin a portion of the Work prior to the date that the Notice to Proceed is issued to Contractor (the “**Interim Notice to Proceed**”).

9. SUBCONTRACTORS AND LABOR RELATIONS

9.1 Subcontractors.

Subject to the terms hereof, Contractor shall have the right to have any portion of the Work performed by a Subcontractor qualified to perform such Work pursuant to written subcontracts or written purchase orders, provided that Contractor shall not be relieved from any liability or obligation under this Agreement as a result of entering into such subcontracts or purchase orders. Contractor shall require that all Work performed, and all equipment provided by Subcontractors is received, inspected and otherwise furnished in accordance with this Agreement, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including defects therein) of such Subcontractors. The Contractor shall assure that all subcontractors performing services in accordance with this Agreement carry identical insurance coverage as Contractor either individually or as an additional insured on the policies of the Contractor. Exceptions may be made only with the approval of the County. Contractor shall indemnify the County for any uninsured losses relating to the contractual services involving subcontractors, including without limitation workers’ compensation claims. The County shall not have any obligation or liability to any Subcontractor. Each contract, subcontract and purchase order with a Subcontractor must provide that the rights thereunder are assignable to the County or its designee at any time. No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Agreement. If any Subcontractor is specifically identified in the Project Permit or the application therefor, then Contractor shall not use any other Subcontractor without the prior written approval of the County.

9.2 Purchase Orders and Subcontracts.

9.2.1 Prior to issuing the purchase order to the manufacturers for the major equipment, Contractor shall provide a copy of the purchase order to the County for its review and comment. The County shall review and comment on such purchase orders within ten (10) Business Days following receipt thereof and Contractor shall incorporate all comments submitted by or on behalf of the County into the final purchase orders issued by Contractor. For clarification, unless the Parties agree otherwise, the extent of the County’s involvement in securing the purchase orders for the major equipment shall be the County’s right to review and comment on the purchase orders, as set forth in this **Section 9.2.1**, and the Contractor shall be fully responsible for insuring that all equipment ordered and purchased for the Project is the correct equipment for the performance and operation of the Project as provided for in this Agreement.

9.2.2 In addition, Contractor shall submit to the County a copy of each unpriced purchase order and subcontract entered into with a Subcontractor for equipment. Each such purchase order and subcontract shall show, where applicable, the Subcontractor’s name, manufacturer’s name, materials type, model number, size, quantity and lists of the equipment ordered, and shall be submitted to the County when issued for purchase. Each subcontract and purchase order shall require each Subcontractor to assume toward Contractor those terms and conditions of contracting which Contractor customarily includes in its subcontracts. At a minimum, all subcontracts shall require the Subcontractors to comply with applicable Laws and the Project Permits, shall provide that the County has the right of inspection as provided hereunder and require such Subcontractors to (a) be subject to the safety and security provisions of this Agreement, (b) provide guarantees and warranties with respect to its portion of the Work and the equipment, (c) provide certificates of insurance as set forth herein, and (d) be subject to

the Dispute procedures as set forth herein. All subcontracts shall preserve and protect the rights of the County, shall not prejudice such rights and shall require each Subcontractor to enter into similar agreements with its subcontractors. In addition to the foregoing requirements, Contractor shall include in each subcontract and purchase order the following language to make the County an express third-party beneficiary of such subcontract or purchase order:

The parties to this contract agree, acknowledge and confirm that the services, work, equipment, materials and supplies to be provided hereunder by [Subcontractor] will be incorporated into the Project and that Howard County, Maryland is a third-party beneficiary of this [agreement/purchase order] entitled, in its own name or in the name of [Contractor], to enforce this [agreement/purchase order] against [Subcontractor].

9.3 Labor Disputes.

Contractor shall advise the County promptly, in writing, of any actual, anticipated or threatened labor dispute that might affect the performance of the Work by Contractor or by any of its Subcontractors. Contractor shall promptly undertake all commercially reasonable efforts to prevent or resolve any strikes or other labor disputes among its employees or the employees of its Subcontractors, and to minimize any resulting disruption of the progress of the Work. As provided in **Article 22**, a labor strike or work stoppage shall not constitute a Force Majeure if such labor strike or work stoppage is lawful and results from Contractor's or its Subcontractor's breach of a valid collective bargaining agreement or violation of applicable labor Laws.

10. DETAILED PLANS; INSPECTION; EFFECT OF REVIEW AND COMMENT

10.1 Detailed Plans; Documents for Approval.

10.1.1 Contractor shall prepare the Detailed Plans described in **Exhibit M** and shall submit Documents for Approval in the format described in **Section 10.7** and **Exhibit M** to the County at least thirty (30) days before the date on which the Work described in them is to be undertaken. Upon the written request of the County, Contractor shall provide to the County all information requested in connection with the Documents for Approval. Contractor shall discuss and answer any inquiries concerning the Documents for Approval with the County. Within a reasonable period of time, but not more than fifteen (15) Business Days after submission of the Documents for Approval pursuant to this **Section 10.1.1**, the County may reject or amend any Documents for Approval that are not in accordance with the Project Requirements. If the County has not rejected or amended the Documents for Approval within such fifteen (15) Business Day period, then Contractor may proceed with the Work described therein. Neither review, comment upon, approval, rejection or amendment of, nor the failure of the County to review, comment upon, approve, reject or amend all or any part of the Documents for Approval shall (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement or (d) result in any adjustment of the Fixed Construction Price.

10.1.2 After submitting the Documents for Approval in accordance with **Section 10.1.1**, Contractor may, at its own risk, commence Work described in such Documents for Approval prior to the end of the fifteen (15) Business Day period described in **Section 10.1.1**. If, prior to the end of such fifteen (15) Business Day period, the County reasonably rejects or requires amendment of the Work described in such Documents for Approval in order to comply with the Project Requirements, Contractor shall, at its sole cost and expense, remove work implementing the rejected portion of the Documents for

Approval and repair the Work to its condition immediately before commencing the rejected work or, in the case of an amendment, alter the Work to conform to the amendment. In no event shall the County's rejection or request for an amendment of the Work described in the Documents for Approval (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

10.1.3 If Contractor disputes the County's rejection or amendment of Work described in the Documents for Approval because the Work does not conform to the Project Requirements, and this Dispute is resolved in favor of Contractor, then the Scheduled Substantial Completion Date and/or the Scheduled Final Completion Date shall be adjusted to reflect the delay caused by the County's rejection or amendment of such Documents for Approval; provided, however, in no event shall the County's rejection or amendment (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price. Notwithstanding the preceding sentence, if any such Dispute resolution concludes that corrective Work performed under protest by Contractor was not required in order to correct defects or deficiencies in the Project or the Work or was not otherwise required pursuant to this Agreement, then a Change Order shall be issued by the County to compensate Contractor for additional costs incurred by it to perform the corrective Work.

10.1.4 Contractor shall maintain at the Project Site, for information purposes for the County a copy of all Detailed Plans in good order and regularly updated to show changes made during performance of the Work.

10.2 Changes to Specifications or Scope of Work.

10.2.1 Contractor acknowledges the material interest of the County in the Scope of Work and the Specifications, and notwithstanding Contractor's obligation to satisfy the Project Requirements and associated damages for failing to perform this obligation, no change to the Specifications or the Scope of Work shall be made without the prior written approval of the County. In addition, Contractor, after consulting with the County and subject to the written approval of the County, shall make all changes in the Specifications and the Scope of Work necessary to comply with applicable Laws. Contractor shall provide written copies of all changes to the Specifications or the Scope of Work to the County for approval, and upon such approval, Contractor shall implement such changes as part of the Work and provide written copies of the final changes to the County immediately. In no event shall the County's disapproval of a proposed change to the Specifications or Scope of Work (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

10.2.2 The Scope of Work and Specifications set out in **Exhibit A** and the Detailed Plans represent the County's basic requirements and the County reserves the right to review all additional specific drawing or technical data generated for the Project, subject to the provisions of **Article 27**.

10.3 Inspection.

10.3.1 Contractor shall provide the County with equipment production schedules for the major equipment components of the Project.

10.3.2 The County and its designees shall have the right to inspect all items of design, engineering, equipment, material, service or workmanship to be provided hereunder, and Contractor shall arrange such inspection, at the point of fabrication, or elsewhere at the request of the County. The County shall have the right to reject, at any time, any portion of the Work, including, but not limited to, design, engineering, materials, equipment, installation, tools or supplies, that do not conform to the Project Requirements. Upon such rejection, Contractor shall promptly remedy at its sole cost and expense all conditions identified by the County as giving rise to such rejection.

10.3.3 If the County is of the opinion that any Work already performed by Contractor does not meet the Project Requirements, then the County may direct Contractor to inspect or test such Work that has been performed by Contractor. If that portion of the Work is found to be defective or not in accordance with the Project Requirements, Contractor shall remedy such defective Work in accordance with the Project Requirements and such remedy shall not constitute a Change Order for which Contractor is entitled to payment. If such portion of the Work is in accordance with the Project Requirements, then the County shall pay Contractor the cost of the inspection or test, as applicable, pursuant to an executed Change Order Form.

10.3.4 In no event shall the exercise by the County of its right to inspect or reject Work or other materials pursuant to this **Section 10.3** (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price, except as provided in the last sentence of **Section 10.3.3**.

10.4 Access to Work.

The County and its designees shall have the right to observe, inspect and/or independently test the Work, the Project, and the Project Site and to observe all tests of the Work, the Project, or the Project Site. Contractor shall provide the County and its designees with prior Notice of all tests of the Work, the Project, and the Project Site. Contractor shall provide the County and its designees reasonable access to the Work, the Project, the Project Site and the records and documents outlined in **Section 10.6**, as reasonably requested by the County.

10.5 Effect of Inspection of Work.

The inspection, review, and/or comment by the County of any drawing, document, or any Work or services performed by Contractor or any Subcontractor are for monitoring purposes and shall not (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) be used to change the Scope of Work design of the Project, unless actual errors are identified that must be corrected for the safety or proper execution of the Work, (c) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (d) impose any liability on the County under this Agreement, or (e) result in any adjustment of the Fixed Construction Price.

10.6 Record Drawings.

The Detailed Plans shall be regularly updated and maintained to reasonably reflect the record conditions for the Work. All Detailed Plans furnished by Contractor hereunder shall be in English and any undefined terms therein shall have their usual and customary meaning in the United States. All drawings submitted as part of the Detailed Plans shall be identified with the following data:

- The County's Name;
- Project designation;
- Agreement number;
- Specification or Drawing number, if applicable;
- Contractor's name;
- Contractor's drawing number;
- Revision Number and Date; and
- Capital Project Number.

10.7 Field Copies and Final Drawings.

Contractor shall provide to the County all procedures, specifications, Detailed Plans, two (2) reproducible copies of Contractor's field copy of Subcontractor drawings maintained on site and two (2) reproducible copies of the final revision of all engineering drawings prepared by Contractor for the Project. These data must be submitted to the County sorted, assembled, categorized and in a condition that can be used easily by the County's and the County's staff. In addition, Contractor shall provide to the County two (2) electronic copies of all Detailed Plans on CD-ROM with drawings in AutoCad format and PDF format with respect to Detailed Plans received from Subcontractors and data and lists in a commercially available computer database system reasonably acceptable to the County. Submittal of all data under this **Section 10.7** shall be a requirement of Contractor prior to Final Completion.

11. THERMAL ENERGY

11.1 Sources of Thermal Energy.

11.1.1 The thermal energy required for this Project shall be provided from the waste heat generated by the Jenbacher J320 as either exhaust gas or as hot water. The Contractor shall be responsible for determining which thermal energy source(s) will be utilized based on the calculated demand. Although the technical specifications for the Jenbacher J320 are available, the Parties acknowledge and agree that (a) the quality, quantity and consistency of supply of waste heat are uncertain, and (b) the County has not made and makes no representations, warranties or guarantees, of any kind whatsoever, regarding the quantity, quality, pressure, and consistency of supply or other characteristics of the waste heat.

11.1.2 The Parties acknowledge and agree that the County retains the right, in its sole discretion, to remove or replace at any time any part of the Project as a result of reduced available waste heat supply or any other Project operating issues.

11.2 Testing.

Contractor will perform any and all testing of coolant or exhaust gas recommended by equipment manufacturer for material compatibility or required by equipment manufacturer for warranty validation.

11.3 Cooperation with County and other Contractors.

Contractor shall cooperate with the County and its respective contractors in order to minimize interference with any work or activities occurring on or with respect to the Project, the Landfill Gas to Energy System, the Landfill Gas Collection and Recovery System, the Project Site or the Landfill.

11.4 Meters.

11.4.1 As part of its obligation to design, engineer, procure, construct, start-up and test the Project, Contractor shall install meter(s) at the Project that satisfy the requirements and specifications provided by the County which compensate for temperature, pressure, and density as required to adequately test and monitor system performance.

11.4.2 Contractor shall maintain the meters in good condition and repair and shall have such meters inspected, tested and calibrated by an independent and reputable third party. Contractor shall provide the County with three (3) copies of all reports and data produced as a result of such meter inspection and testing.

12. START-UP AND MECHANICAL COMPLETION

12.1 Start-Up.

Prior to Mechanical Completion, Contractor shall start-up and checkout the Project in phases. Within thirty (30) days prior to the Scheduled Start-up Date as set forth in the Progress Schedule, Contractor shall submit to the County a detailed plan for the start-up and testing of the Project by Contractor (the “**Start-up Plan**”). The Start-up Plan shall include, without limitation, (a) a plan for the start-up and a proposed schedule of activities during start-up, (b) system checkout procedures, (c) a list of System Checkout Packages; and (d) training of County staff.

12.2 System Checkout Packages.

12.2.1 “**System Checkout Packages**” shall be prepared by Contractor and provided to the County for review. System Checkout Packages shall be consistent with generator recommendations and include all reasonably necessary checkout and operation information for the Project, including, but not limited to, the following (as applicable):

- Instrumentation checkout and calibration data sheets;
- Factory test reports;
- “Marked Up” process and instrumentation diagrams (P&ID’s);
- List of all Punchlist items remaining;
- Subcontractor field reports, if available;
- Proof of ASME stamps;
- Equipment inspection reports;
- Concrete test reports; and
- Pipe pressure test reports.

12.2.2 After submittal of each System Checkout Package, the County shall have fifteen (15) Business Days to review and comment on such package. Contractor shall supply to the County any information missing from a System Checkout Package and shall undertake to remedy any deficiencies identified by the County with which Contractor agrees, at Contractor’s cost, and Contractor shall perform Disputed corrective work, subject to Contractor’s right to Dispute resolution pursuant to **Article 33**. The County’s comments or failure to comment on any System Checkout Packages shall not operate to waive any of Contractor’s responsibilities under this Agreement or prevent Contractor from proceeding with the Work. If any Dispute resolution award concludes that corrective work performed under protest by Contractor was not required in order to satisfy its obligations under this **Section 12.2** or was not otherwise required under this Agreement, then a Change Order shall be issued by the County to compensate Contractor for additional costs incurred by it to perform such additional Work and, if necessary, to appropriately extend the Scheduled Substantial Completion Date and/or the Scheduled Final Completion Date on account thereof.

12.3 Mechanical Completion.

12.3.1 Contractor shall provide Notice to the County when (a) Contractor has complied with all provisions of this Agreement relating to the installation of all necessary components and systems of the Projects (except for completion of final cleanup, final grading and any other portion of the Work that in the County's reasonable opinion does not affect the commercial operability, safety and mechanical and electrical integrity of the Project), (b) the Project is mechanically and electrically complete and sound, (c) the equipment included in the Project may be operated without damage to the Project or any other property and without injury to any person, (d) all System Checkout Packages required pursuant to **Section 12.2** have been submitted to the County and any deficiencies noted therein by the County to Contractor have been corrected or determined not to be required pursuant to the Dispute resolution proceedings under this Agreement, and (e) the Mechanical Completion requirements set forth in **Exhibit K** have been satisfied.

12.3.2 Within ten (10) Business Days after the County's receipt of Contractor's Notice pursuant to **Section 12.3.1**, and all supporting documentation from Contractor reasonably necessary to verify the statements and conclusions contained therein, the County shall advise Contractor in writing of any Dispute with the representations set forth in Contractor's Notice, including, without limitation, (a) any known defects, deficiencies and/or discrepancies that interfere with the safe generation of heat or electricity, and (b) any known discrepancies between (i) installed equipment, materials and workmanship of such equipment and (ii) installed equipment, materials and workmanship required under this Agreement. Contractor shall then perform corrective measures to remove such defects, deficiencies and/or discrepancies with which Contractor agrees at Contractor's costs, and Contractor shall perform Disputed deficiencies, subject to Contractor's right to Dispute resolution pursuant to **Article 33**. Upon completion of such corrective measures, Contractor shall provide Notice to the County that Contractor has satisfied the requirements of **Section 12.3.1**. The County shall have ten (10) Business Days after receipt of each subsequent notification and all supporting documentation from Contractor reasonably necessary to verify the statements and conclusions contained therein, to advise Contractor, in writing, of any remaining known defects, deficiencies and/or discrepancies which must be corrected by Contractor prior to Mechanical Completion of the Projects. If any Dispute resolution award concludes that corrective work performed under protest by Contractor was not otherwise required under this Agreement, then a Change Order shall be issued by the County to compensate Contractor for additional costs incurred by it to perform such corrective work and, if necessary, to appropriately extend the Scheduled Substantial Completion Date and/or the Scheduled Final Completion Date on account thereof.

12.4 Notice of Mechanical Completion.

Promptly after verification by the County that Contractor has satisfied all of the requirements of **Sections 12.3.1** and **12.3.2** (but in no event more than ten (10) Business Days after receipt from Contractor of all materials reasonably necessary to conduct such verification) the County shall issue a Notice of Mechanical Completion (the "**Notice of Mechanical Completion**"), which shall specify the date of the final Notice of Contractor issued pursuant to **Section 12.3.1** or **Section 12.3.2** (as the case may be) as the "**Mechanical Completion Date**".

12.5 No Effect on Scheduled Substantial Completion Date, Scheduled Final Completion Date, Fixed Construction Price.

No action taken (or failed to be taken) by Contractor or the County pursuant to this **Article 12** shall (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

13. PERFORMANCE TESTS; SUBSTANTIAL COMPLETION

13.1 Performance Test Plan.

Contractor shall prepare a detailed procedure for each of the Performance Tests to be conducted indicating the data to be collected and method of analysis, and such detailed procedure (the “**Performance Test Plan**”) shall be submitted to the County for approval at least sixty (60) days prior to the conduct of the initial Performance Tests. With respect to any Performance Tests which are conducted by Contractor after the initial Performance Tests, Contractor shall submit, to the County for approval, the Performance Test Plan for such tests, which shall include a description of Contractor’s proposed method for implementing improvements necessary to demonstrate satisfaction of the Performance Guarantees, at least ten (10) Business Days prior to reconducting such Performance Tests. Contractor shall permit representatives and/or designees of the County to attend and observe the conduct of all Performance Tests. The cost of all Performance Tests is included in the Fixed Construction Price whether or not such test is successful (except if such additional testing is required by the County pursuant to a Change Order due to no fault of Contractor).

13.2 Performance Test Report.

Within thirty (30) days after completion of the Performance Tests, Contractor shall provide to the County three (3) copies of a Performance Test report (the “**Performance Test Report**”) and a final Notice to the County certifying completion of the Performance Tests and satisfaction of all of the Performance Guarantees. Within fifteen (15) Business Days after receipt of such materials from Contractor, the County shall either accept or object to such certifications, in whole or in part. If the County objects to such certifications, then Contractor shall reconduct the applicable Performance Tests (or any part thereof) until the County determines that all Performance Guarantees have been satisfied in accordance with this **Article 13**, subject to Contractor’s right to Dispute resolution pursuant to **Article 33**. If the County does not object to Contractor’s certifications within such fifteen (15) Business Day period or affirmatively provide Notice to Contractor of no objection, then the Performance Tests shall be deemed to have been successfully completed as of the date of the Performance Test Report relating to such Performance Tests but such deemed successful completion of the Performance Tests shall not relieve Contractor of any of its obligations or liabilities under this Agreement, except for its obligation to deliver the Performance Test Report with respect to such Performance Tests pursuant to this **Section 13.2**.

13.3 Substantial Completion.

Substantial Completion shall be deemed to have occurred when all of the following have occurred:

13.3.1 The Project is substantially and materially complete in accordance with this Agreement (except as provided in the Punchlist included with Contractor’s Notice that the Project has satisfied the requirements of this **Section 13.3**);

13.3.2 The Project has achieved Mechanical Completion;

13.3.3 Receipt by the County of the Performance Test Report, which demonstrates satisfaction of the Performance Guarantees;

13.3.4 All equipment and systems have been installed and are operational such that the Project can be safely and commercially operated in accordance with applicable Laws, and Project Permits;

13.3.5 All Spare Parts have been obtained pursuant to **Section 5.1**;

13.3.6 Receipt by the County from Contractor of the inventory of all Primary Spare Parts pursuant to **Section 5.1**;

13.3.7 Contractor has provided Notice to the County that Contractor has satisfied all of the conditions for Substantial Completion as described in this **Section 13.3** (the “**Notice of Substantial Completion**”);

13.3.8 Contractor has provided the County with copies of draft version of the Operation and Maintenance Manual pursuant to **Section 3.23.1**; and

13.3.9 In addition to the foregoing, only for the purpose of receiving the release of the retainage or the reduction in the amount of Retainage Security (as the case may be) as provided in **Section 7.6.1** the following additional requirements for Substantial Completion must be satisfied:

- (a) receipt by the County of all reports and information to be provided to it as described in **Section 10.7**;
- (b) receipt by the County of payment of all amounts owed by Contractor hereunder;
- (c) receipt by the County of the financial information required by **Section 3.7**; and
- (d) the results of the Performance Tests must demonstrate satisfaction of the Performance Guarantees.

13.4 Notice of Substantial Completion.

13.4.1 Within fifteen (15) Business Days after receipt of Contractor’s Notice that the Project has satisfied the requirements of **Section 13.3**, the County shall advise Contractor in writing of any Dispute with the representations set forth in Contractor’s Notice. Contractor shall then perform corrective measures necessary to satisfy the conditions of **Section 13.3** in order to achieve Substantial Completion, subject to Contractor’s right to Dispute resolution pursuant to **Article 33**, and upon completion of such corrective measures shall again notify the County in writing that Contractor has satisfied the requirements of **Section 13.3**. The County shall have fifteen (15) Business Days after each subsequent notification to advise Contractor, in writing, of any remaining defects, deficiencies and/or discrepancies which must be corrected by Contractor. If any Dispute resolution award concludes that corrective work performed under protest by Contractor was not required under this Agreement, then a Change Order shall be issued by the County to compensate Contractor for additional costs incurred by it to perform such corrective work and to appropriately extend the Scheduled Substantial Completion Date and/or the Scheduled Final Completion Date on account thereof.

13.4.2 Within fifteen (15) Business Days after receipt by the County of Contractor’s Notice that Contractor has satisfied all of the requirements of **Section 13.3**, the County shall either (a) advise Contractor in writing of a Dispute as provided in **Section 13.4.1**, or (b) issue a Notice of Substantial Completion which shall specify the Substantial Completion Date as the date on which Substantial Completion was achieved.

13.5 No Effect on Scheduled Substantial Completion Date, Scheduled Final Completion Date, or Fixed Construction Price.

No action taken, or failed to be taken by Contractor or the County pursuant to this **Article 13** shall (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

14. DELAY LIQUIDATED DAMAGES

14.1 Delay Liquidated Damages.

14.1.1 Contractor understands that if Final Completion is not achieved by the Scheduled Final Completion Date, the County will suffer damages, including, without limitation, loss of grant monies and costs associated with heating the building, and other costs which are difficult or impossible to ascertain or measure. Therefore, Contractor specifically agrees that if the Project has not achieved Final Completion by the Scheduled Final Completion Date for the Project, then Contractor shall pay daily delay liquidated damages to the County in an amount equal to Two Thousand Five Hundred Dollars (\$2,500) for each Day or part thereof that the Project has not achieved Final Completion. It is expressly agreed that such delay liquidated damages do not constitute a penalty or fine and, except as provided in **Sections 7.6 and 13.3.9** with respect to the County's right to withhold retainage, are the County's sole damage remedy for Contractor's delay in achieving Final Completion; provided that, notwithstanding Contractor's payment of delay liquidated damages pursuant to this **Section 14.1**, the County shall also have the right to seek enforcement of this Agreement and the performance by Contractor of its obligations hereunder including, without limitation, the obligations of Contractor to continue performing corrective or remedial activity to achieve Final Completion. The delay liquidated damages payable pursuant to this **Section 14.1.1** are subject to the liquidated damage cap provisions set forth in **Section 37.10.2**.

14.1.2 Contractor shall pay the County delay liquidated damages accrued in respect of the fixed daily amount under **Section 14.1.1** for each month (or any part of a month) of such delay, on or before the thirtieth (30th) Day of the immediately succeeding month. Late payments of such amounts shall bear interest at Late Payment Rate or the highest rate permitted by Law, whichever is less. The County shall have the right to offset any liability of Contractor under this **Section 14.1** in accordance with **Section 7.8**.

14.2 Satisfaction of Performance Guarantees.

If Contractor does not achieve the Performance Guarantees for the Project within sixty (60) days after the occurrence of the Substantial Completion Date for the Project, then the County may, in its sole discretion and upon Notice to Contractor, elect to cause the Contractor to pay the Buydown Amount for the Project to the County pursuant to **Section 14.3** based upon the results of the most recent Performance Tests certified or deemed certified by the County for the Project.

14.3 Buydown Amount.

14.3.1 As liquidated damages for the failure of the Project to achieve the Performance Guarantee for minimum specified heating capacity, as demonstrated by the results of Performance Tests conducted in accordance with **Section 13.1**, Contractor shall pay the liquidated damages in the amount of \$5.00 for each BTU/hour of heating capacity that the heat recovery system is short of the Contractor's guaranteed heating capacity (the "**Buydown Amount**") for the Project based on the results of such recently completed Performance Tests certified or deemed certified by the County for the Project. The

Buydown Amount payable pursuant to this **Section 14.3** is subject to the liquidated damage cap provisions set forth in **Section 37.10.2**.

14.3.2 The County and Contractor hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to this **Section 14.3** for the Buydown Amount are reasonable, considering the damages that the County will sustain in the event of Contractor's failure to achieve the Performance Guarantees for the Project. These amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining as of the date hereof the exact amount of damages that will be sustained in such event and are the County's sole monetary damage remedy for Contractor's delay failure to achieve the Performance Guarantees.

14.3.3 Contractor shall pay the Buydown Amount required under this **Section 14.3**, on or before the earlier of (a) the Scheduled Final Completion Date, or (b) ten (10) Business Days after the Contract Deadline if Final Completion does not occur by the Contract Deadline. If Contractor fails to make timely payment of the Buydown Amount, interest on any unpaid amount shall accrue from the due date at the greater of (x) the Late Payment Rate, or (y) the maximum permitted legal interest rate at the time prevailing. To the extent that the County is holding retainage.

15. FINAL COMPLETION

15.1 Final Completion.

15.1.1 Within fifteen (15) Business Days after the Substantial Completion Date, Contractor shall submit to the County a list of Work to be completed to achieve Final Completion. The County shall have twenty (20) Business Days to review and approve the list of requirements for Final Completion.

15.1.2 Final Completion of the Project shall be deemed to have occurred when all of the following have occurred:

15.1.2.1 The Project has achieved Substantial Completion and items to attain Final Completion have been satisfied;

15.1.2.2 Receipt by the County of the Performance Test Report, certified (or deemed certified) by the County, to demonstrate satisfaction of the Performance Guarantees;

15.1.2.3 Contractor has completed all Punchlist items;

15.1.2.4 Contractor has provided the County with copies of the final Operation and Maintenance Manual pursuant to **Section 3.23.1**;

15.1.2.5 All Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Project Site;

15.1.2.6 The County has received from Contractor and each of its Subcontractors a final lien waiver; provided, however, if any lien has been filed against the Project Site, or the Project, this condition shall be deemed to be satisfied with respect to such lien if the full amount of liability related to such lien has been bonded by Contractor pursuant to a payment bond in form and substance reasonably satisfactory to the County;

15.1.2.7 The County has received payment of all amounts owed by Contractor hereunder;

15.1.2.8 The County has received from Contractor the financial information required by **Section 3.7**; and

15.1.2.9 The County has received from Contractor all drawings, reports, data and information in accordance with **Section 10.7**.

15.1.3 Contractor shall provide Notice to the County when Contractor has satisfied all of the conditions for Final Completion as described in **Section 15.1.2**.

15.1.4 Within fifteen (15) Business Days after receipt of Contractor's notification that the Project has satisfied the requirements of **Section 15.1.2**, the County shall advise Contractor in writing of any Dispute with the representations set forth in Contractor's Notice. Contractor shall then perform corrective measures necessary to satisfy the conditions of **Section 15.1.2** in order to achieve Final Completion and upon completion of such corrective measures shall again notify the County in writing that Contractor has satisfied the requirements of **Section 15.1.2**. The County shall have fifteen (15) Business Days after each subsequent notification to advise Contractor, in writing, of any remaining defects, deficiencies and/or discrepancies which shall thereafter be promptly corrected by Contractor. If any Dispute resolution award concludes that corrective work performed under protest by Contractor was not required in order to satisfy its obligations under this Agreement, then a Change Order shall be issued by the County to compensate Contractor for additional costs incurred by it and to appropriately extend the Scheduled Final Completion Date on account thereof.

15.2 Notice of Final Completion.

Within ten (10) Business Days after verification by the County that Contractor has satisfied all of the requirements of **Sections 15.1.1, 15.1.2 and 15.1.3**, the County shall issue a Notice of Final Completion (the "**Notice of Final Completion**"), which shall specify the Final Completion Date as the date of the final Notice of Contractor to the County issued pursuant to **Section 15.1.3 or 15.1.4**, as applicable. Issuance of the Notice of Final Completion pursuant to this **Section 15.2** shall in no way relieve Contractor of any of its obligations or liabilities under this Agreement.

15.3 No Effect on Scheduled Final Completion Date, Fixed Construction Price.

No action properly taken by Contractor or the County pursuant to this **Article 15** shall (a) affect the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation or liability of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

16. CHANGE ORDERS

16.1 Changes in Work Directed by the County.

16.1.1 The County shall have the right to make any Change Order, whether such Change Order is a modification, alteration, addition or deletion. Prices for Change Orders shall be developed on an "open book" approach based on (a) fully burdened direct labor costs for Contractor's employees to be incurred by Contractor, (b) equipment and material costs to be incurred by Contractor, (c) third party labor costs to be directly incurred by Contractor, and (d) approved administrative overhead. Contractor shall provide the County with a detailed estimate of such costs. The estimate shall include capital costs for equipment and materials, field labor, expenses and engineering.

16.1.2 The County shall advise Contractor of any proposed Change Order and the County and Contractor shall then promptly consult with each other concerning the cost and impact, if any, on the Progress Schedule of implementing the proposed change. Following such consultation, the County may request and Contractor shall thereupon promptly prepare, at its own cost and expense, a detailed estimate relating to the contemplated change (a "**Change Order Estimate**"), which shall include (a) any projected increase or decrease of the Fixed Construction Price and, if applicable, the payment amount(s) affected by such change, (b) the projected effect, if any, on the Progress Schedule (including, but not limited to, the Scheduled Substantial Completion Date and the Scheduled Final Completion Date), and (c) the potential effect on Contractor's ability to comply with any of its obligations hereunder, including Warranties and the Performance Guarantees.

16.1.3 The Contractor shall be allowed to add the following maximum percentages for overhead and profit to its costs for labor and materials:

- Twenty percent (20%) may be added by the Contractor for overhead and profit for Work performed by its own forces.
- Fifteen percent (15%) may be added by the Subcontractor for overhead and profit for Work performed by the Subcontractor; the Contractor may add an additional Five percent (5%) of the Subcontractor's costs for labor and materials.
- The County may require the Contractor to produce independent audits to verify overhead and profit rates claimed by the Contractor.

16.2 Change Order.

16.2.1 Upon agreement and execution of a Change Order by Contractor and the County, the County shall promptly adjust (in consultation with Contractor), as necessary, the Fixed Construction Price, the Progress Payment Schedule and/or the Progress Schedule to reflect the agreed upon changes.

16.2.2 If the County and Contractor cannot promptly reach agreement on the matters listed in the Change Order, or cannot agree that the matters under discussion constitute a Change Order, the County may, at its sole discretion, order Contractor in writing to promptly proceed to complete the Change Order in accordance with the County's interpretation of the matter under Dispute and the County shall pay Contractor for the undisputed costs of such Change Order. In the event the County and Contractor cannot reach agreement on the schedule change or estimated cost of the Change Order within fifteen (15) Business Days after Contractor is ordered to proceed under protest, either Party may submit the matter for Dispute resolution as contemplated in **Article 33**.

16.2.3 In no event shall Contractor undertake a Change Order until (a) a Change Order Form has been approved and signed by the County, and (b) if a disagreement exists as described in **Section 16.2.2**, Contractor has received Notice from the County to proceed under protest. In no event shall changes to the Work necessary for Contractor's design and Detailed Plans work to allow the Project to perform as specified in this Agreement constitute a Change Order unless such changes are caused by a Force Majeure or specifically agreed to in writing by the County.

16.3 Suspension Due to Change Order.

The County may notify Contractor in writing to suspend Work, for a maximum of fifteen (15) Business Days, on that portion of the Work affected by a contemplated Change Order, (whether or not such change will require a modification to the Work), pending the County's decision on such Change Order. The terms of such suspension shall be in accordance with **Article 21** and such suspension shall

result in an adjustment of the Progress Schedule in accordance with **Section 6.3** only to the extent that such suspension affects the critical path of the Project as shown on the CPM schedule.

16.4 Change in Law.

If after the date of this Agreement there is any Change In Law, Contractor shall promptly submit a Change Order to the County reflecting any changes required by the Change In Law. Contractor shall not be responsible for compliance with any such Change In Law unless and until a Change Order is accepted by the County or Contractor is ordered by the County to proceed under protest.

16.5 Contractor Proposals.

After execution of this Agreement, Contractor may propose any addition, deletion, or modification to this Agreement that in Contractor's opinion does not constitute a Change Order by giving the County prior Notice thereof. The County shall promptly review and approve or reject Contractor's proposed addition, deletion, or modification and accept or reject same. The County may, at its sole discretion, determine that the proposed addition, deletion, or modification be deemed a Change Order, to be handled accordingly.

16.6 Contractor Proposed Change Order.

Contractor may propose a Change Order to the County on account of (a) additions, modifications, deletions or enhancements to the Project, (b) changes to the cost of the Work caused by the negligent acts or omissions of the County or anyone under the County's control (excluding Contractor and any person or entity performing Work on its behalf), (c) changes to the time of performance of the Work caused by the negligent acts or omissions of the County or anyone under the County's control (excluding Contractor and any person or entity performing Work on its behalf), or (d) Force Majeure events. However, Contractor shall not make any Change Order (including changes that have no net cost effect on the Fixed Construction Price) without a Change Order Form signed by the County and Contractor or a decision of the arbitrators pursuant to the provisions of **Article 33**; provided, however, that if there is a Dispute between the County and Contractor as to the occurrence or existence of a Force Majeure, Contractor may unilaterally execute and submit a Change Order Form in response to such Force Majeure and commence performance of the activities described therein prior to resolution of such Dispute in accordance with **Article 33** and, if the Parties agree that (x) the activities described in such Change Order were not required as a result of such Force Majeure, then Contractor shall have undertaken such activities at its sole cost and shall not be entitled to any reimbursement or adjustment to the Fixed Construction Price for such activities undertaken pursuant to the unilateral Change Order, or (y) such Change Order was required as a result of Force Majeure, then Contractor shall be entitled to (i) a Change Order for the scope of the Work, and (ii) solely with respect to a Force Majeure occurrence described in **Section 22.2(C)**(Change In Law) or **Section 22.2(D)** (adverse subsurface geotechnical conditions), an adjustment to the Fixed Construction Price. The Fixed Construction Price or any component thereof shall not be increased with respect to any Change Order proposed by Contractor unless the requirements set forth in this **Section 16.6** are satisfied.

16.7 Minor Changes.

The County shall have the right to issue clarifications and order minor changes in the Work, effected by written order, which do not involve an adjustment to the Fixed Construction Price, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, provided that such clarifications and changes are consistent with the intent of this Agreement. Such clarifications and changes shall be binding upon the Parties and Contractor shall receive no additional compensation therefore, nor shall there be any change to this Agreement.

16.8 Field Orders.

The County shall have the right to direct the Contractor to make a change in the field for issues that require immediate attention in order to prevent delays in the Work, protect property, assure safety of personnel or address other issues where failure to take immediate action could cause increased costs, property damage or pose environmental or safety hazards.

17. WARRANTIES CONCERNING THE WORK

17.1 Warranties.

The Contractor warrants the Work as follows (collectively the “Warranties”):

17.1.1 The Work shall meet all Project Requirements, shall conform to all material aspects of the final drawings and specifications, and be free from careless and/or unskilled workmanship. All Work shall be completed in a good and workmanlike manner. The County’s rights under this **Section 17.1.1** shall extend until the later of (a) one (1) year from the Substantial Completion Date, or (b) twelve (12) months following corrective action on the portion of the Work for which corrective action was performed.

17.1.2 The Work shall be free from faulty or defective materials and equipment, and all equipment incorporated into the Work shall perform in accordance with the Scope of Work, including, without limitation, the Performance Guarantees. The County’s rights under this **Section 17.1.2** shall extend until the later of (a) one (1) year from the Substantial Completion Date, or (b) twelve (12) months following corrective action on the portion of the Work for which correction action was performed.

17.1.3 Contractor further warrants that the equipment and materials supplied by Contractor or its Subcontractors hereunder shall be new (unless otherwise specifically agreed to by the County in writing) and that all mechanical and electrical equipment, machines, systems and similar devices shall fully operate for the use for which they are intended.

17.1.4 Contractor shall have no responsibility for damage caused to the Work by ordinary wear and tear, or for damage caused by the County Indemnified Parties or by any other person (other than Contractor or its Subcontractors) at the Project Site performing the obligations of the County hereunder or on behalf of the County.

17.1.5 Contractor shall be responsible for correcting (at no expense to the County) patent and latent defects in the Project, and all elements thereof, or any failure of Contractor or any Subcontractor to follow the requirements hereunder (even if such latent defects or failure is discovered after the expiration of the Warranties). Any Contractor or Subcontractor design defects shall be remedied by a means acceptable to the County.

17.2 Breach of Warranties.

17.2.1 The County shall promptly give Notice to Contractor upon discovery of any breach of the Warranties under **Section 17.1** during the Warranty Period (defined below). In the event of any such breach, Contractor shall thereupon, and at its own cost and expense, promptly re-perform any necessary Work and promptly provide (at no expense to the County) such design, engineering, equipment, material, labor, shipping and services necessary to cause the Work and the Project to conform to said Warranties. Contractor’s Warranties for any rework of design, engineering, equipment, materials, construction or workmanship shall commence upon the completion of such rework. The Warranties shall be assignable by the County without additional approval by Contractor.

17.2.2 Upon receipt from the County of a Notice during the Warranty Period of a breach of any Subcontractor warranty, representation or guarantee obtained by Contractor under **Section 17.3**, Contractor shall be responsible for enforcing any such warranty, representation or guarantee. The County's rights under this **Section 17.2.2** shall commence at the time such representation, warranty or guarantee is furnished and shall continue until the expiration of the Warranty Period. Until expiration of the Warranty Period, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Contractor if such cost is (a) covered by the Warranties, (b) required to replace or repair defective equipment, materials, systems, or workmanship furnished by Subcontractors, and (c) not recoverable by the County under any representation, warranty or guarantee received from a Subcontractor. Under the foregoing clause (c), should Subcontractor seek to defend on the grounds of errors by Contractor, the County may enforce the warranty immediately against Contractor and Contractor shall resolve such issues with the Subcontractor.

17.2.3 If a breach of the Warranties or of any Subcontractor representation, warranty or guarantee that Contractor is responsible to enforce requires immediate curative action by Contractor or the County (such as an unplanned outage of the Project requiring immediate curative action), then Contractor and the County shall agree on a remedy immediately upon receipt by Contractor of Notice of such breach and Contractor shall use its best efforts to have personnel (with the necessary equipment, if practical under the circumstances) at the Project Site to remedy said breach within twenty-four (24) hours of receipt by Contractor of Notice of such breach. Except for the foregoing cases requiring immediate curative action by Contractor or the County, within five (5) Business Days of receipt by Contractor of a Notice from the County under this **Section 17.2** specifying a breach of the Warranties or of any Subcontractor representation, warranty or guarantee that Contractor is responsible to enforce, Contractor and the County shall mutually agree when and how Contractor shall remedy said breach. If Contractor does not begin and diligently proceed to complete said remedy within the time agreed to, or should Contractor fail to reach such an agreement with the County within such five (5) Business Day period (or immediately, in the case of conditions requiring immediate curative action, in which case Contractor's right to institute Dispute resolution proceedings pursuant to this Agreement shall be preserved), the County, after Notice to Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be fully borne by Contractor. Any such action by the County or any third party shall not alter, amend, waive or relieve any obligation of Contractor under this Agreement.

17.3 Subcontractor Warranties.

Without in any way derogating or negating Contractor's representations and warranties, including the Warranties and its Performance Guarantees with respect to all of the Work, Contractor shall use its best efforts to obtain warranties from Subcontractors with a duration at least as long as the Warranties; provided that Contractor's inability to obtain such warranties from its Subcontractors shall not release Contractor from its obligations to provide the Warranties required under this Agreement. All warranties of Subcontractors when obtained by Contractor shall be (a) furnished promptly to the County, (b) written so as to survive all County and Contractor inspections, tests and approvals, (c) written in English, (d) assignable to the County, and (e) freely assignable by the County. While this Agreement is in effect, Contractor must enforce all rights and benefits and must perform all obligations under the Subcontractor warranties. Contractor shall assign any surviving Subcontractor warranty to the County upon the termination or expiration of this Agreement. Warranties for all equipment shall remain in effect from the date of delivery to the Project Site until one (1) year following the Substantial Completion Date. If Subcontractors offer extended warranties beyond the aforementioned warranty periods at extra cost, Contractor shall notify the County, and the County may, if it so elects, issue a Notice to Contractor of a Change Order and the Fixed Construction Price shall be adjusted accordingly. Warranties for repair or replacement of portions of the Work requiring repair or replacement after the Substantial Completion

Date shall extend until the later of (x) one (1) year from the Substantial Completion Date, or (y) a period of twelve (12) months from the date such repairs or replacements are completed. For the purpose of this Agreement, each of the periods described in the three (3) immediately preceding sentences and in **Sections 17.1.1 and 17.1.2** shall be defined as the “**Warranty Period**” with respect to the equipment or Work described therein. Contractor shall be responsible for enforcing all representations, warranties and guarantees from Subcontractors.

17.4 No Effect on Scheduled Dates or Fixed Construction Price.

Approvals given by the County represent consent to the action proposed by Contractor, but shall not be considered representations concerning the propriety, fitness or usefulness of the proposed action, and shall not (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, including, without limitation, Contractor’s obligation to strictly comply with the terms and conditions of this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

17.5 Governing Law of Warranties.

All warranties shall be governed by the Laws of Maryland.

18. TITLE; RISK OF LOSS

18.1 Title.

18.1.1 Contractor warrants good title to all materials, equipment, tools and supplies furnished by it or its Subcontractors that become part of the Project, the Landfill Gas to Energy System, or the Landfill Collection and Recovery System or that are purchased for the County. Title to all or a portion of said materials, equipment, systems, tools and supplies shall pass to the County upon the date Contractor receives payment for said material, equipment, systems, tools and supplies, provided that for all such items title shall pass to the County upon payment to Contractor only if title has been passed to Contractor, otherwise, title shall pass to the County at such time as Contractor has acquired title to such item. In no event shall Contractor acquire title to said materials, equipment, systems, tools and supplies later than the delivery of any such item to the Project Site. Contractor shall retain care, custody and control of said materials, equipment, systems, tools and supplies and exercise due care with respect thereto until the termination or expiration of this Agreement. Said transfer of title shall in no way affect the County’s rights as set forth in other provisions of this Agreement.

18.1.2 For the purpose of protecting the interest of the County in all materials, equipment, tools and supplies with respect to which title has passed to the County but which remain in the possession of Contractor or another party, Contractor shall take or cause to be taken all steps necessary under the Laws of the appropriate jurisdiction(s) to protect the County’s title and to protect the County against claims by other parties with respect thereto. In the event of any such claim, Contractor shall defend and hold harmless the County if such claims are threatened or instituted against the County.

18.1.3 All drawings and other documents (including specifications) furnished or to be furnished by Contractor in performing the Work shall be the property of the County. Contractor hereby grants to the County and its successors as owner or lessor of the Project an irrevocable, perpetual and royalty free license to use any documents furnished hereunder in connection with the ownership, operation and maintenance of the Project.

19. DEFAULT AND TERMINATION

19.1 Contractor Events of Default.

Each of the following constitutes an “**Event of Default**” on the part of Contractor, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the County to perform its obligations hereunder:

19.1.1 If Contractor (or any guarantor of Contractor’s obligation hereunder) makes an assignment for the benefit of creditors, or admits in writing an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either Contractor (or any guarantor of Contractor’s obligation hereunder) or of a major part of its property; or

19.1.2 If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of Contractor (or any guarantor of Contractor’s obligation hereunder) or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, Contractor (or any guarantor of Contractor’s obligation hereunder) is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize Contractor (or any guarantor of Contractor’s obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to Contractor (or any guarantor of Contractor’s obligation hereunder), as now or hereinafter in effect, is filed against Contractor (or any guarantor of Contractor’s obligation hereunder) and is not dismissed within sixty (60) days after such filing, or if Contractor (or any guarantor of Contractor’s obligation hereunder) is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against Contractor (or any guarantor of Contractor’s obligation hereunder) under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize Contractor (or any guarantor of Contractor’s obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to Contractor (or any guarantor of Contractor’s obligation hereunder), as now or hereafter in effect; or

19.1.3 Contractor assigns its rights or obligations under this Agreement or any part thereof to any person, company, partnership, corporation or other entity except as otherwise permitted hereunder; or

19.1.4 Contractor disregards Laws or the lawful requirements of any competent authority or the instructions of the County consistent with this Agreement, except to the extent such failure results from default by the County in its obligations to make payment under **Article 7**; or

19.1.5 Contractor fails or refuses to (a) design, engineer, permit, procure, construct, start-up, test, repair or replace the Project in accordance with this Agreement, or (b) fulfill any of its obligations to the County in accordance with this Agreement; or

19.1.6 Any representation or warranty made by Contractor herein or in any payment invoice or related documentation submitted hereunder is false or misleading when made; or

19.1.7 Contractor fails to pay any amount that Contractor is required to pay to the County under this Agreement within fifteen (15) Business Days after receipt by Contractor of written demand from the County; or

19.1.8 Contractor abandons or suspends progress of the Work for five (5) Business Days due to any reason other than a Force Majeure or weather conditions that prevent the performance of certain elements of Work, which must be performed above certain temperatures or in dry conditions in order to meet design strength, warranty or other manufacturer requirements; or

19.1.9 Contractor fails to provide and maintain in full force and effect the letter of credit or bonds, as applicable, as required pursuant to **Article 36**;

19.1.10 Contractor fails to provide and maintain in full force and effect the insurance policies required pursuant to **Section 23.1**; or

19.1.11 Contractor fails to achieve Substantial Completion of the Project by the Scheduled Substantial Completion Date and/or Contractor fails to pay the associated delay liquidated damages that it is obligated to pay hereunder; or

19.1.12 Contractor fails to achieve Final Completion of the Project by the Contract Deadline; or

19.1.13 Contractor fails to perform any obligation under this Agreement other than as specified above in this **Section 19.1**.

No failure or refusal on the part of Contractor described in **Sections 19.1.4 and 19.1.6** shall constitute an “**Event of Default**” unless and until: (a) the County has given Notice to Contractor specifying with particularity the existence of such default, and (b) Contractor has failed to cure such default within thirty (30) days after receipt of such Notice, or in the case of a default which cannot be cured within thirty (30) days, has promptly initiated actions to cure such default and is thereafter diligently pursuing such cure; provided, however, such period shall not extend beyond sixty (60) days after the County’s initial Notice to Contractor concerning such default, unless approved by the County in writing (which approval may be withheld by the County in its sole and absolute subjective discretion).

19.2 County Remedies.

In the case of one (1) or more Events of Default on the part of Contractor pursuant to **Section 19.1**, the County shall have the following rights and remedies, in addition to those rights and remedies that may be available to the County at law or in equity, all remedies being cumulative and not exclusive and Contractor shall have the following obligations:

19.2.1 The County, without prejudice to any of its other rights or remedies, may upon Notice to Contractor (a) suspend payment, and/or (b) terminate this Agreement on the date specified in a written Notice of termination to Contractor;

19.2.2 Upon termination of this Agreement by the County for cause in accordance with **Section 19.2.1** or for convenience in accordance with **Section 20.2**, Contractor shall cooperate with the County and its designees to effect an orderly transition of the Work and shall, if requested by the County, (a) withdraw from the Project Site, (b) provide the County with detailed information regarding the current status of the Work, including, without limitation, the status of subcontracts, purchase orders, Project Permits and other agreements related to the Work, (c) assign to the County or any designee of the County those subcontracts, purchase orders, Project Permits and other agreements related to the Work, as requested by the County, (d) enter into no further subcontracts, purchase orders or other agreements related to the Work other than as requested by the County, and (e) turn over to the County complete possession of any or all designs, materials, equipment, tools, purchase orders, inquiries, letters, magnetic media, schedules, drawings or other items that the County deems necessary for completion of the Work.

The County may employ any other person, company, partnership, corporation or other entity (a “**Replacement Contractor**”) to finish the Work related to the Project in any way, including without limitation design, engineering, permitting, procurement, construction, start-up and testing of the Project in accordance with the terms and conditions of this Agreement by whatever method that the County may deem expedient. In addition, Contractor shall not remove any equipment, materials, systems or tools that (w) have been fabricated especially for or are unique to the Project, (x) are incorporated in or are attached to, or are intended to be incorporated in or attached to, the Project, (y) constitute temporary or permanent scaffolding or supporting elements for the construction of the Project, or (z) the removal of which could damage the Project or any portion thereof or otherwise adversely affect or delay the construction, use or maintenance of the Project.

19.2.3 The County, without incurring any liability to Contractor, shall have the right to have the Work related to the design, engineering, permitting, procurement, construction, start-up and testing of the Project finished by the Replacement Contractor subject to **Section 19.2.4**.

19.2.4 If this Agreement is terminated by the County in accordance with **Section 19.2** for cause as a result of an Event of Default by Contractor under **Section 19.1** hereof, Contractor shall be liable to reimburse the County for all costs and expenses incurred by the County in connection with terminating this Agreement and engaging a Replacement Contractor plus the amount by which (a) the cost and expense to complete (or cure deficiencies in) the Work exceeds (b) the unpaid balance of the Fixed Construction Price plus (c) the amount of any penalties, costs, expenses or damages payable by the County to any third party, as a result of such termination. The County shall use its reasonable commercial efforts to mitigate such penalties, costs, expenses and damages. The County shall be entitled to withhold payments Contractor determines are due to it prior to the date of termination until Final Completion of the Project and determination by the County that Contractor is entitled to such payments. Upon completion of the Project by the County or third parties, the total cost of the Work related to the design, engineering, procurement, construction, start-up and testing of the Project shall be determined, and the County shall notify Contractor in writing of the amount, if any, that Contractor shall pay the County or the County shall pay Contractor. If at any time the total expense incurred by the County in completing the Projects exceeds the portion of the Fixed Construction Price not paid to Contractor, then Contractor shall pay the amount of any such excess from time to time existing within thirty (30) days of written demand therefor by the County. Any amounts due to the County hereunder when due shall bear interest at the Late Payment Rate. The County may in its discretion employ such other person, company, partnership, corporation or other entity to finish the Work by whatever method or means as the County in its sole and absolute subjective discretion may deem expeditious. In the event that any termination of this Agreement by the County due to a Contractor Event of Default pursuant to **Section 19.2** is later adjudicated to have been improper, then Contractor shall be entitled to recover such amounts as Contractor is entitled to under **Section 20.3**.

19.3 County Events of Default.

Each of the following constitutes an “**Event of Default**” on the part of the County, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of Contractor to perform its obligations hereunder:

19.3.1 If the County makes an assignment for the benefit of creditors, or admits in writing an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either the County or of a major part of its property; or

19.3.2 If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the County or of a major part of its property is appointed and is not discharged

within sixty (60) days, or if, by decree of such a court, the County is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the County pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the County, as now or hereinafter in effect, is filed against the County and is not dismissed within sixty (60) days after such filing, or if the County is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against the County under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the County pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the County, as now or hereinafter in effect; or

19.3.3 County fails to substantially fulfill any of its material obligations to the Contractor in accordance with this Agreement.

19.3.4 No failure or refusal on the part of the County described in **Sections 19.3.1, 19.3.2, 19.3.3 or 19.4** shall constitute an “**Event of Default**” unless and until: (a) Contractor has given Notice to the County specifying with particularity the existence of such default, and (b) the County has neither corrected such default nor initiated actions likely to cure such default within thirty (30) days after receipt of such Notice, except in the case of a default which cannot be cured within thirty (30) days, the County, if it promptly initiated actions to cure such default and is thereafter diligently pursuing such cure, the cure period shall be extended for an additional sixty (60) days.

19.4 Contractor Remedies.

Contractor may elect to suspend the performance of the Work for cause as a result of an Event of Default by the County under **Section 19.3**, upon delivery of a Notice of such suspension to the County.

19.4.1 If Contractor suspends the performance of the Work pursuant to this **Section 19.4**, then such suspension shall terminate upon cure of the Event of Default by the County, at which time Contractor shall immediately recommence performance of the Work and the Scheduled Substantial Completion Date shall be extended by a period equal to the suspension period plus any time reasonably required for mobilization or any other delay associated with the suspension in the Work that is beyond the reasonable control of Contractor, provided that the Scheduled Substantial Completion Date shall be extended only to the extent the suspension can be shown on the Progress Schedule to affect such date.

20. TERM; TERMINATION FOR CONVENIENCE; TERMINATION PAYMENT; TERMINATION FOR EXCESSIVE DAMAGES

20.1 Term.

The term of this Agreement shall commence on the date that this Agreement is fully executed and extend through the Final Completion Date for the Project up to the date of the expiration of all warranties.

20.2 County's Termination for Convenience.

Upon at least ten (10) Business Days prior Notice to Contractor, the County shall have the right to terminate this Agreement for its convenience, at any time and without cause.

20.3 Termination Payment.

If this Agreement is terminated prior to the Final Completion Date (a) by the County without cause and for convenience, and Contractor has complied with all of the County's termination

instructions, or (b) by Contractor for cause in accordance with **Section 19.4**, then Contractor shall be entitled to receive payment for Work actually performed up to the date of termination and with respect to the Fixed Construction Price, in accordance with the Progress Payment Schedule for Work completed and accepted by the County, plus (x) all costs incurred by Contractor with respect to payment obligations already undertaken prior to such termination, and (y) reasonably incurred demobilization and close out costs; provided, however, that in neither case shall Contractor be entitled to any recovery of profit or unabsorbed corporate overhead in connection with Work not actually performed or in connection with future Work. Contractor's right to such payment shall constitute Contractor's sole remedy for such termination of this Agreement.

20.4 County's Termination Due to Excessive Damages.

If at any time Contractor is obligated to pay damages hereunder in excess of the liability cap provided in **Section 37.10.2** and relieved from paying such damages by operation of **Section 37.10.2**, then the County shall have the right to terminate this Agreement without any liability to Contractor, including without limitation any liability pursuant to **Section 20.3** as a result of such termination.

21. SUSPENSION

21.1 Suspension by the County.

The County may at any time and for any reason, in its sole and absolute subjective discretion, suspend performance of the Work or portion thereof by giving Notice to Contractor. Such suspension shall continue for the period specified in the suspension Notice. At any time after the effective date of the suspension, the County may require Contractor to resume performance of the Work or portion thereof. On or before the end of the specified suspension period, the County shall advise Contractor in writing that (a) the suspension period will be extended, or (b) Work will resume, or (c) this Agreement will be terminated (for convenience or for cause) on a specific date. The County shall compensate Contractor as a Change Order for those costs of Contractor incurred during or as a result of the suspension period that are documented by Contractor to the reasonable satisfaction of the County, attributable solely to the suspension, and are:

21.1.1 For the purpose of safeguarding and/or protecting from deterioration the Work and the materials and equipment in the course of manufacturing, in transit and at the Project Site; and

21.1.2 For personnel, Subcontractors or rented equipment the payment of which, with the County's prior written concurrence, is continued during the suspension period and/or for demobilization or remobilization of personnel, Subcontractors or equipment, demobilization, penalties for cancellation of contracts, or other costs incurred due to the suspension and for additional costs due to Contractor having to complete the Work under less favorable conditions.

21.2 Contractor Obligations During Suspension.

Upon receiving a Notice of a suspension from the County in accordance with **Section 21.1**, except to the extent that the Notice requires otherwise, Contractor shall (a) immediately discontinue the Work as of the date and to the extent specified in the Notice, (b) enter into no additional purchase orders or subcontracts, except those that may be specified in the Notice, (c) make reasonable efforts to obtain suspension of all purchase orders and subcontracts to the extent that they relate to the performance of the suspended Work, (d) continue to protect and maintain the Work and the materials and equipment in the course of manufacturing, in transit, at the Project Site and (e) take all other reasonable steps to minimize the costs and expenses associated with such suspension.

21.3 Escalation Costs.

If prior to the Final Completion Date, the aggregate suspension period of the Work by the County is longer than one hundred eighty (180) days, and this Agreement is not terminated as described in **Section 21.1**, then Contractor may submit for the County's review and approval a Change Order for actual, reasonable and documented escalation costs incurred by Contractor as a result of such suspension. Notwithstanding the foregoing the escalation costs requested shall not exceed an amount which is the lesser of either (a) the product that equals the amount of the original Contract cost affected multiplied by the CPI – U (All Urban Consumers, for Washington-Baltimore, DC-MD-VA-WV, All Items, Not Seasonally Adjusted) 1982-84 = 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or (b) the product that equals the amount of the original Contract cost affected multiplied by 1.04. Further, nothing in this Section 21.3 shall imply either the pre-approval or the required approval of the County.

21.4 Extension of Scheduled Substantial Completion Date.

In the case of any suspension of the entire Work, or a portion thereof, under this **Article 21**, the Scheduled Substantial Completion Date shall be extended by a period equal to the suspension period plus any time that is demonstrated as reasonably required for mobilization, rework or any other delay associated with the suspension in the Work that is beyond the reasonable control of Contractor, provided that the Scheduled Substantial Completion Date shall be extended only to the extent that the suspension can be shown on the Progress Schedule to affect such date.

21.5 Contractor Claims for Compensation.

All claims by Contractor for compensation under this **Article 21** must be made within forty-five (45) days after the suspension period has ended or such claim shall be deemed to have been waived by Contractor.

22. FORCE MAJEURE

22.1 Notice of Force Majeure.

A Party to this Agreement shall not be in default hereunder or liable to the other Party for its failure to perform its obligations under this Agreement to the extent such failure results from a Force Majeure. A Party claiming the benefit of this **Section 22.1** (the “**Affected Party**”) shall undertake normal and customary commercially reasonable steps to diligently overcome or remove such Force Majeure. The Affected Party shall give Notice of such claim to the other Party within five (5) Business Days of the occurrence of the Force Majeure, and the Affected Party shall provide the other Party with information concerning the nature and duration of the Force Majeure, its effect on the Work and the Progress Schedule and the Affected Party's efforts to overcome or remove the Force Majeure. If the Affected Party fails to provide the Notice described in the preceding sentence to the other Party within ten (10) Business Days of the inception of the event of a Force Majeure, the Affected Party shall be deemed to have waived its rights to the benefits of this **Article 22** or any other relief described in this Agreement with respect to such Force Majeure. A Notice satisfying the requirements of this **Section 22.1** must be clearly titled “NOTICE OF FORCE MAJEURE EVENT” and any writing not so titled shall not constitute the Force Majeure Notice required by this **Section 22.1**. The Affected Party shall provide periodic updates to the other Party during the continuation of the Force Majeure describing the duration of the Force Majeure, its effect on the Work and the Progress Schedule, and the Affected Party's efforts to overcome or remove the Force Majeure. When the Affected Party is able to resume the performance of its obligations hereunder it shall promptly provide a Notice to the other Party and resume such performance.

22.2 Definition of Force Majeure.

“**Force Majeure**” means any event or condition, whether affecting the Project, the Project Site, Contractor, or the County that occurs after the date of this Agreement and that has, or may reasonably be deemed to have, a material adverse effect on the Project, the Project Site, the Work or on the ability of Contractor or the County to perform any of their respective obligations under this Agreement or cause for delay in such performance or compliance, in each case if such event or condition is beyond the reasonable control, could not reasonably have been foreseen and protected against using customary and normal commercial means, and is not the result of willful or negligent acts or omissions of the Affected Party or its agents or Subcontractors relying thereon as justification for not performing any obligation or complying with any condition required of such Party hereunder. Force Majeure events may include, without limitation, the following:

(a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Project Site), landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, terrorism, war, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage;

(b) the order or judgment of any Government Authority if it is not also the result of willful or negligent acts or omissions or a lack of reasonable diligence of the non-performing Party, provided that the diligent defense in Good Faith of any such order or judgment shall not constitute or be construed as a willful or negligent act or omission or a lack of reasonable diligence of such non-performing Party;

(c) Change in Law without any provisions for exception and which cannot reasonably be complied with an adjustment in the Fixed Construction Price agreed to by the Parties;

(d) an adverse subsurface geotechnical condition satisfying the conditions set forth in **Section 4.2.4;**

(e) failure of a Government Authority to timely issue a Project Permit or other required Governmental Approval by the late finish date for the Project Permit or Governmental Approval, as shown in the CPM schedule, provided that such failure is not the result of delayed, willful or negligent actions or omissions or a lack of reasonable diligence or responsiveness of the Contractor in (1) applying for or following through on the Project Permit or Governmental Approval, or (2) Contractor otherwise performing its obligations hereunder;

(f) the discovery of Hazardous Materials (unless such Hazardous Materials were introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder) at, on or beneath the Project Site.

“**Force Majeure**” shall not include the following:

(i) reasonably anticipated weather conditions for the geographic area of the Project Site;

(ii) the imposition of any new condition in or other change to a Project Permit;

(iii) the failure of a Subcontractor or any party to an agreement with Contractor to perform its obligations under such agreement or undertaking unless the failure of such person to perform is caused by a Force Majeure affecting such person;

(iv) with respect to Contractor only, any error or defect in the design or construction or equipping of the Project or the performance of the Work;

(v) any lawful labor strike or work stoppages that are the result of Contractor's or its Subcontractor's breach of a valid collective bargaining agreement or violation of applicable Laws; or

(vi) general economic or industry conditions or increased costs of equipment, material, labor or other components of the Work.

22.3 Removal of Force Majeure.

22.3.1 The Affected Party shall continue to perform its obligations under this Agreement to the extent possible after the occurrence of the Force Majeure and must use all commercially reasonable efforts to overcome, mitigate and remedy its inability to perform its obligations and the delays, damages and effects of the Force Majeure.

22.3.2 If, within five (5) Business Days after a Force Majeure occurrence that has caused Contractor to suspend or delay performance of all or a portion of the Work, Contractor has failed to take commercially reasonable efforts to overcome or cure the Force Majeure occurrence or its direct or indirect effects on the performance of its obligations hereunder, the County may, in its sole and absolute subjective discretion and after Notice to Contractor, at Contractor's expense, initiate commercially reasonable measures to overcome or cure such Force Majeure occurrence or its direct or indirect effects on the performance of Contractor's obligations hereunder and thereafter require Contractor to resume full or partial performance of the Work; provided, however, that no such action of the County shall (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

22.4 Extension of Scheduled Substantial Completion Date.

If a delay results from an occurrence that constitutes a Force Majeure under this **Article 22**, the Scheduled Substantial Completion Date shall be extended only to the extent Contractor demonstrates to the reasonable satisfaction of the County that such delay is shown on the Progress Schedule to affect such date(s). This analysis shall be based on the most current Progress Schedule in effect at the start of the Force Majeure occurrence and take into account the CPM schedule of the Project for the activity or activities affected by the Force Majeure occurrence as shown on the CPM schedule. The Progress Schedule shall be adjusted to reflect any new Scheduled Substantial Completion. The Fixed Construction Price shall only be subject to adjustment for a Force Majeure occurrence described in **Section 22.2(c), Section 22.2(d), Section 22(e) and Section 22(f)**. Adjustment of the Fixed Construction Price due to such Force Majeure occurrences or adjustment of the Scheduled Substantial Completion Date and adjustment of the Progress Schedule shall be Contractor's sole remedies in the event of a Force Majeure. For the avoidance of doubt, if Contractor disagrees with the County's rejection of Contractor's evaluation of the effect of the Force Majeure event on the Progress Schedule or the Fixed Construction Price, Contractor may have recourse to the Dispute resolution provisions of **Article 33**.

23. INSURANCE

23.1 Contractor Provided Insurance.

Prior to commencement of any Work under this Agreement and throughout the Term, Contractor shall obtain and maintain, at its sole expense, and shall require each Subcontractor to obtain and maintain (either individually or as an additional insured under Contractor's policies), the insurance policies set forth in **Exhibit O**. All such insurance policies shall be subject to the following provisions:

23.1.1 The deductible for claims made against any insurance obtained pursuant to this **Section 23.1** shall be borne by Contractor

23.1.2 Only "occurrence" type coverages with no "sunset clause" ("claims made" coverages are not acceptable except with respect to professional liability insurance);

23.1.3 Coverages must be with Best's "A-" rated carriers that are licensed and qualified to do business in the State of Maryland;

23.1.4 The County shall be named as additional insured on the Commercial General Liability and Environmental Impairment policies;

23.1.5 All losses shall be adjusted to the County's satisfaction;

23.1.6 Deductibles in excess of Twenty-Five Thousand Dollars (\$25,000) shall require the County's prior written approval; and

23.1.7 All claims made shall provide a minimum of a five (5) year discovery period after the Final Completion Date.

23.2 Certificates of Insurance.

23.2.1 All certificates of insurance for the insurance described in **Section 23.1** shall expressly provide that no less than sixty (60) days' prior Notice by certified mail shall be given to the County in the event of (a) the exhaustion of any aggregate limit under any insurance policy, or (b) any material alteration, cancellation or non-renewal of the coverage evidenced by such certificate. The County shall not be obligated to make payment of any portion of the Fixed Construction Price to Contractor unless Contractor's current certificates of insurance are on file and acceptable to the County.

23.2.2 In no event shall any failure of the County to receive Contractor's certificates of insurance required hereunder or to demand receipt of such certificates of insurance be construed as a waiver of Contractor's obligations to obtain insurance pursuant to these insurance requirements. The obligation of Contractor to procure and maintain any insurance required by the provisions of **Section 23.1** is a separate responsibility of Contractor and independent of the duty to furnish a certificate of insurance of any such insurance policies.

23.2.3 Neither Party shall amend the insurance policies so as to reduce or limit coverages, increase deductibles or otherwise adversely affect the rights and coverages of the insured under such policies or allow the required insurance coverages to lapse without the other Party's prior written approval.

23.3 Notice of Cancellation.

Should a notice of insurance cancellation be issued for non-payment of premiums or any part thereof with respect to insurance to be provided by Contractor, or should Contractor fail to provide and maintain certificates for such insurance as set forth herein, the County shall have the right, but shall not be obligated, to pay for such coverage and to deduct all costs and expenses thereof from any sums that may be due or become due Contractor, or to seek reimbursement for said payments from Contractor, which sums shall be due and payable immediately upon receipt by Contractor of an invoice therefor from the County.

23.4 Failure to Provide Insurance.

In the event of failure of Contractor to furnish and maintain the insurance required pursuant to **Section 23.1** and to furnish satisfactory evidence thereof, the County shall have the right (but not the obligation) to secure and maintain such insurance on behalf of Contractor and Contractor agrees to furnish all necessary information to place the insurance coverage and to pay the costs and expenses thereof to the County immediately upon presentation of an invoice and reasonable cost substantiation therefor.

23.5 Cooperation.

Contractor agrees to cooperate fully with the County's insurance representatives and/or risk manager in providing all necessary insurance data and information as requested by the County and to, complete all associated documents furnished by the County or its insurance representatives.

23.6 Claims.

23.6.1 A Party entitled to or desiring recovery of insurance proceeds under any insurance policy (such Party hereinafter defined as the "**Claimant**") shall be responsible for initiating and pursuing such claim.

23.6.2 Contractor shall not be entitled to any adjustment, modification or relief of or from its obligations under this Agreement as a result of Contractor's obligation to pay or bear the cost of any insurance deductible in connection with an insurance claim by Contractor.

24. LOSS OR DAMAGE

24.1 Project Repair and Replacement Responsibility.

Contractor assumes full responsibility, without reimbursement, for the cost of replacing the loss or repairing the damage to all materials, equipment, systems, supplies and maintenance equipment (including temporary materials, equipment and supplies) which are purchased for permanent installation in or for use during construction, regardless of whether the County has title thereto, except to the extent that the loss is caused by the County's gross negligence or willful misconduct.

24.2 Responsibility for Safe Delivery and Storage of Materials, Equipment and Supplies.

As part of the performance of the Work, Contractor shall be responsible for assuring safe delivery of all materials, equipment, systems, supplies and other items to the Project Site and the safe and secure storage thereof at the Project Site or other locations approved by the County.

25. INDEMNIFICATION

25.1 Contractor Indemnification.

25.1.1 To fullest extent permitted by applicable Law, Contractor shall defend, indemnify and hold harmless the County and its respective, officials, assigns, employees, agents, officers, directors, members and anyone else acting for or on behalf of them or their successors and assigns (the “**County Indemnified Parties**”) from and against all liability, suits, judgments and claims by third parties, including without limitation claims for property damage, bodily injury or death, and all damages, losses, and expenses (including, but not limited to, costs of response, removal of, remediation, any other clean up costs, liabilities and/or penalties, court costs and reasonable attorneys’ fees) which may arise as a result of:

(a) any negligent act, error or omission or willful misconduct of Contractor, any Subcontractor or their assigns, employees, agents, contractors, officers and directors or anyone else acting for or on behalf of Contractor, any Subcontractor or their Affiliates, successors or assigns relating to the performance of all Work and services to be rendered pursuant to this Agreement, or

(b) except as set out in subparagraph (a) above, any act, or omission of Contractor, any Subcontractor or their assigns, employees, agents, contractors, officers and directors or anyone else acting for or on behalf of Contractor, any Subcontractor or their Affiliates, successors or assigns, or

(c) Hazardous Materials that were introduced to the Project Site by Contractor or its Subcontractors or their assigns, employees, agents, contractors, officers and directors or anyone else acting for or on behalf of Contractor, any Subcontractor or their Affiliates, successors or assign or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder, or

(d) any breach or default by Contractor in performing its obligations under this Agreement.

The above indemnification shall not apply to any claim, damage, loss or expense to the extent caused by the gross negligence or willful misconduct of any County Indemnified Party.

25.1.2 Contractor shall defend, indemnify and hold the County Indemnified Parties harmless from and against all claims by any Government Authority claiming Taxes based on gross receipts or on income of Contractor or any of its Subcontractors or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor or any of its Subcontractors or any of their respective agents or employees under this Agreement.

25.2 Indemnification Claims.

25.2.1 In all claims against a County Indemnified Party by Contractor or any Subcontractor or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor’s indemnification obligation stated above shall not be limited in any way in the amount or type of damages, compensation or benefits payable by or for Contractor or the Subcontractor under the applicable workers’ compensation act, disability acts, or other employee benefit acts.

25.2.2 When required to indemnify a County Indemnified Party in accordance with this Agreement, Contractor shall assume on behalf of such County Indemnified Party, and conduct with due

diligence and in Good Faith, the defense of any such suit against such person, whether or not Contractor is joined therein; provided, however, that, without relieving Contractor of its obligations hereunder, the County Indemnified Party may elect to participate in the defense of any such suit.

25.2.3 The County Indemnified Party shall promptly give Contractor Notice of such claim or action upon the receipt of actual knowledge or information by the County Indemnified Party of any possible claim or of the commencement of such claim or action. Contractor shall have the right to assume the defense of any such claim or action with counsel designated by Contractor and reasonably satisfactory to the County Indemnified Party; provided, however, that if the defendants in any such action include both Contractor and the County Indemnified Party, and the County Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to Contractor, the County Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such County Indemnified Party, the cost of which shall be part of the indemnification obligations of Contractor under this **Article 25**. Should any County Indemnified Party be entitled to indemnification under this **Article 25** as a result of a claim or action by a third party, and should Contractor fail to assume the defense of such claim or action, the County Indemnified Party may, at the expense of Contractor contest or settle such claim or action. Except to the extent expressly provided herein, no County Indemnified Party shall settle any claim or action with respect to which it has sought or intends to seek indemnification pursuant to this **Article 25** without the prior written consent of Contractor, which consent shall not be unreasonably withheld, conditioned or delayed.

25.2.4 The provisions of this **Article 25** shall not deprive any County Indemnified Party of any other indemnity action, right or remedy otherwise available to such County Indemnified Party at common law.

25.2.5 Notwithstanding anything in this **Article 25**, Contractor's liability to any County Indemnified Party hereunder shall be reduced proportionately to the extent that a negligent act or omission of the County Indemnified Party directly contributed to the loss, injury or property damage.

25.3 Survival of Indemnification.

The provisions of this **Article 25** shall survive completion of the Work and/or the termination or expiration of this Agreement.

26. PATENT INFRINGEMENT

26.1 Patent Infringement and Indemnification Rights.

26.1.1 Contractor shall defend, indemnify and hold harmless the County Indemnified Parties against all loss, damage and expense (including court costs and reasonable attorneys' fees) arising from any claim or legal action for unauthorized disclosure or use of any trade secrets or of patent, copyright, license or trademark infringement arising from Contractor's performance or that of its Subcontractors under this Agreement and/or asserted against any County Indemnified Party that either (a) concerns any equipment, materials, supplies, or other items provided by Contractor or any Subcontractor under this Agreement; or (b) is based upon the performance of the Work by Contractor or any Subcontractor, including the use of any tools, implements or construction methods by Contractor or any Subcontractor; or (c) is based upon the design or construction of any item or unit specified by Contractor under this Agreement or the operation of any item or unit according to directions embodied in Contractor's final process design, or any revision thereof, prepared or approved by Contractor; provided, however, that such indemnification shall exclude any claim solely based upon uses by the County in

violation of Subcontractor's manuals supplied to the County by Contractor, or changes in the equipment, materials, supplies, or other items made by the County, or any item or unit installed by the County.

26.1.2 If such claim or legal action for such infringement results in a suit against the County, Contractor shall, at its election and in the absence of a waiver of this indemnity by the County, have sole charge and direction thereof on the County's behalf so long as Contractor diligently prosecutes said suit. The County shall promptly give Contractor Notice of such claim or action upon the receipt of actual knowledge or information by the County of any possible claim or of the commencement of such claim or action.

26.1.3 If Contractor has charge of a suit brought against the County by a third party, then the County shall render such assistance as Contractor may reasonably require in the defense of such suit, except that the County shall have the right to be represented therein by counsel of its own choice and at its own expense.

26.1.4 If the County is enjoined from completion of the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof as a result of any claim, legal action or litigation of the type described in this **Article 26**, requiring indemnification by Contractor, Contractor shall promptly arrange to have such injunction removed at no cost to the County, and the County may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require Contractor to supply, temporarily or permanently, facilities meeting the requirements of this Agreement and not subject to such injunction and not infringing any patent or to remove all such facilities and refund the cost thereof to the County or to take such steps as may be necessary to ensure compliance by the County with such injunction, all to the satisfaction of the County and all without cost or expense to the County.

26.2 No Effect on Scheduled Dates, Fixed Construction Price.

In no event shall the County's acceptance of Contractor's engineering designs and/or proposed or supplied materials and equipment (a) affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, unless specifically agreed to in writing by Contractor and the County, (b) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (c) impose any liability on the County under this Agreement, or (d) result in any adjustment of the Fixed Construction Price.

26.3 Survival of Indemnification.

The provisions of this **Article 26** shall survive completion of the Work and/or the termination or expiration of this Agreement.

27. TREATMENT OF CONFIDENTIAL INFORMATION

27.1 Confidential Information.

Except as may be necessary for the County to satisfy its obligations under applicable Law or contracts, the County shall not disclose information provided to it by Contractor that is deemed to be commercial or financial information by Contractor and that is exempt from disclosure under the State of Maryland Public Information Act ("**Confidential Information**"), subject to the Howard County Charter. Contractor shall clearly identify and mark any information or document provided to the County that it believes is Confidential Information and shall indemnify, defend and hold the County harmless against all costs the County may incur if any information is not released at the request of Contractor.

27.2 Public Relation Matters.

Contractor agrees that all public relation matters arising out of or in connection with the Work shall be the sole responsibility of the County. Therefore, Contractor shall obtain the County's prior written approval of the text of any announcement, publications, photograph or other type of communication concerning the Work or the Project that Contractor or its Subcontractors wish to release for publication.

27.3 Survival.

The provisions of this **Article 27** shall survive completion of the Work and/or the termination or expiration of this Agreement.

28. INVENTIONS AND LICENSES

28.1 Intellectual Property Rights.

28.1.1 Contractor agrees that the County and any other owner, licensee or lessee of the Project and their respective successors, assigns and designees shall at all times have the right to use, either by license or otherwise, any and all patented or proprietary information relative to the Project that is included in the Work, whether now existing or hereinafter developed or otherwise acquired, to the extent necessary in connection with the construction, ownership, operation or maintenance of the Project, and Contractor further agrees that it shall, upon request, provide aforementioned persons and parties with such information in a timely fashion, without any limitations and subject only to the confidentiality restrictions provided in **Article 27**. Contractor hereby grants to the County and its respective successors, assigns and designees an irrevocable, perpetual and royalty free license to use all patents, copyrights and other proprietary information now or hereafter owned or controlled by Contractor or its Subcontractors, that in any way relates to the use or enjoyment of all or any part of the Work or the Project, in each case, to the extent necessary for the construction, ownership, operation or maintenance of the Project or any unit or component thereof designed, specified or constructed by Contractor under this Agreement.

28.1.2 Contractor shall obtain an assignment of the same rights and licenses, as stated in **Section 28.1.1**, with respect to all patents, copyrights and other proprietary information from each Subcontractor and such rights and licenses are hereby assigned by Contractor to the County.

28.2 Survival.

The provisions of this **Article 28** shall survive completion of the Work and the termination or expiration of this Agreement.

29. ASSIGNMENT BY THE COUNTY

29.1 The County may, at any time and without the prior consent of Contractor, assign all or part of its rights, title, and interest in this Agreement. In addition, the Parties acknowledge and agree that the County may, at any time and without the prior consent of Contractor, sell, lease or otherwise transfer all or any portion of the Project to any other party.

29.2 In the event that the County assigns, sells, leases or otherwise transfers all or any portion of the Project to a third party, and such third party is, in the exercise of Contractor's reasonable discretion, determined to be a direct competitor of Contractor with respect to the construction of generating facilities similar to the Project, Contractor shall have the right to provide the County with a written request that this

Agreement be terminated for the convenience of the County and the County shall so terminate this Agreement.

30. ASSIGNMENT BY CONTRACTOR

Contractor may, with the County's prior written consent (which consent may not be unreasonably withheld, delayed or conditioned), assign this Agreement to any successor to all of or substantially all of Contractor's business by merger or acquisition. Any other assignment by Contractor of this Agreement or any partial or total interest therein, without the County's prior written consent, shall be null and void *ab initio*.

31. INDEPENDENT CONTRACTOR

Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the County other than that of the County and independent contractor, nor shall it be construed as creating any relationship whatsoever between the County and Contractor's employees. Neither Contractor, nor any of its employees, are or shall be deemed to be employees of the County. Neither the County, nor any of its employees, are or shall be deemed to be employees of Contractor. Subject to the provisions of this Agreement, Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees.

32. LIENS AND CLAIMS

Contractor shall indemnify and hold harmless the County and defend it from all liens filed in connection with the Work, including all expenses and reasonable attorneys' fees incurred in discharging any liens or similar encumbrances provided that such liens did not result from the County's wrongful action or wrongful failure to pay Contractor. If Contractor shall default in discharging any lien(s) or claims(s) filed or asserted against or upon the County, the Project, or the Project Site to the extent such liens or claims are filed in connection with the performance of the Work hereunder or upon any materials, equipment, systems or structures encompassed therein, or upon other premises upon which they are located or stored, the County shall provide Contractor with Notice thereof and Contractor shall then satisfy or defend any such lien(s) or claims(s) or otherwise cause such lien to be released or discharged in accordance with applicable Law. If Contractor either does not satisfy such lien(s) or claim(s) or does not post a bond against such lien(s) and claim(s), in each case within fifteen (15) Business Days of Notice from the County, then the County shall have the right to satisfy such lien(s) and claim(s) or post a bond against such lien(s) and claim(s), and Contractor shall, within five (5) Business Days of request by the County, reimburse the County for all costs incurred by the County to discharge or bond such lien(s) or claim(s) including administrative costs, reasonable attorneys' fees and other direct third party expenses. The County shall have the right to offset any liability of Contractor under this **Section 32** in accordance with **Section 7.8**.

33. DISPUTE RESOLUTION PRIOR TO LITIGATION

33.1 Dispute Resolution Procedure.

33.1.1 Initiation. Either Party may initiate the Dispute resolution by giving Notice of its claim to the other Party.

33.1.2 Level I. Within five (5) Business Days of the receipt of the Notice, the Project Manager and the Project Director shall meet, confer, and attempt to resolve the Dispute within the next ten (10) Business Days.

33.1.3 Level II. If the Dispute is not resolved within two (2) Business Days of the close of the Level I meeting, a representative of the County and Contractor shall meet, confer, and attempt to resolve the Dispute within the next ten (10) Business Days.

33.1.4 Resolution. The terms of the resolution of all Disputes concluded in Level I or Level II meetings shall be memorialized in writing and signed by each Party.

34. NOTICES AND COMMUNICATIONS

34.1 Notices.

Any Notice pursuant to the terms and conditions of this Agreement shall be in writing and (a) delivered personally, or (b) sent by registered or certified mail, return receipt requested, or (c) sent by a recognized overnight mail or courier service, to the following addresses or such other address as any such person shall specify to the other such persons:

If to Contractor:

If to the County:

Howard County Bureau of Environmental Services
6751 Columbia Gateway Drive, Suite 514
Columbia, MD 21046
Attention: Evelyn Tomlin & Niti Blackwell

Notices shall be deemed served when delivered as evidenced by either a signed receipt or a notice of refusal.

35. GENERAL REPRESENTATIONS AND WARRANTIES

35.1 Contractor Representations and Warranties.

Contractor represents and warrants to the County that:

35.1.1 Contractor is a corporation, duly organized, validly existing, and in good standing under the Laws of the State of _____ and is duly authorized and qualified to conduct business in the State of Maryland.

35.1.2 Contractor has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

35.1.3 Neither the execution or delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations in connection with the transactions contemplated by this Agreement, or the fulfillment by Contractor of the terms or conditions thereof (a) conflicts with, violates or results in a breach of any Law applicable to Contractor, or (b) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.

35.1.4 No approval, authorization, order or consent of, or declaration, registration or filing with, any Government Authority is required for the valid execution and delivery of this Agreement by Contractor or performance hereunder by Contractor, other than the Project Permits which will be obtained in accordance with the terms hereof.

35.1.5 There is no action, suit or proceeding, at law or in equity, before or by any court or Government Authority, pending or, to the best of Contractor's knowledge, threatened, against Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Contractor of its obligations under this Agreement or in connection with the transactions contemplated by each thereof, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby.

35.1.6 Contractor is not in arrears with respect to the payment of any monies due and owing the United States Government, the State of Maryland or the County, or any departments, agencies or units thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the Work.

35.1.7 Contractor has not employed or retained any person or entity, other than a bona fide employee or agent working for Contractor, to solicit or secure this Agreement and Contractor has not paid or agreed to pay any person or entity, other than a bona fide employee or agent working for Contractor, any fee or any other consideration contingent on the execution of this Agreement.

35.2 County Representations and Warranties.

The County represents and warrants to Contractor that:

35.2.1 The County is a body corporate and politic, duly organized and validly existing under the constitution and Laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

35.2.2 The County has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

35.2.3 Neither the execution or delivery by the County of this Agreement, nor the performance by the County of its obligations in connection with the transactions contemplated by this Agreement, or the fulfillment by the County of the terms or conditions thereof (a) conflicts with, violates or results in a breach of any Law applicable to the County, or (b) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a default thereunder.

35.2.4 No approval, authorization, order or consent of, or declaration, registration or filing with, any Government Authority is required for the valid execution and delivery of this Agreement or performance hereunder by the County.

35.2.5 There is no action, suit or proceeding, at law or in equity, before or by any court or Government Authority, pending or, to the best of the County's knowledge, threatened, against the County, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations under this Agreement or in connection with the transactions contemplated by each thereof, or which, in any way, would adversely affect the validity or enforceability

of this Agreement, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby.

36. PERFORMANCE SECURITY

As of the date hereof, Contractor shall deliver to the County (a) a letter of credit in a form acceptable to the County and issued by a financial institution that is acceptable to the County, in the County's sole discretion, or (b) a one hundred percent (100%) performance bond and a one hundred percent (100%) payment bond substantially in forms set forth in Exhibits H and J, respectively, executed by itself as principal and a surety that is acceptable to the County, in its sole discretion. In the event that the County desires to have additional persons named as payees on the letter of credit or obligees on the bonds, as applicable, the County may request an endorsement to the letter of credit or bonds in a form acceptable to the County and the letter of credit issuer or Contractor's surety, as applicable. The letter of credit or the payment and performance bonds required under this Article 36, as applicable, shall be in an amount equal to the Fixed Construction Price and shall expire on the date of the expiration of the Warranty Period, provided that if a latent defect(s) is discovered in the Project prior to the expiration of the Warranty Period, then such letter of credit or payment and performance bonds shall not expire until such latent defect(s) has been corrected by Contractor. If a latent defect is discovered in the Project after the expiration of the Warranty Period, then Contractor shall deliver to the County a letter of credit in a form acceptable to the County and issued by a financial institution that is acceptable to the County, in its sole discretion, in an amount equal to the estimated costs to repair such latent defect and that expires on the date that such latent defect has been corrected by Contractor.

37. MISCELLANEOUS PROVISIONS

37.1 Limit on County's Obligations.

Notwithstanding anything herein to the contrary, all obligations to be undertaken by the County pursuant to this Agreement shall not constitute general obligations of the County and shall not pledge the full faith and credit of the County, which County funds are subject to appropriation. The County shall be required to make payments and to perform such of its obligations under this Agreement as require the expenditure of funds only to the extent that there are funds available to the County.

37.2 No Personal Liability Against Agents of the County.

The execution and delivery of this Agreement by the County does not impose any personal liability on the members, officials, officers, employees or agents of the County. No recourse can be had by Contractor for any claims based on this Agreement against any member, official, officer, employee or other agent of the County in his or her individual capacity, all such liability, if any, being expressly waived by Contractor by the execution of this Agreement.

37.3 Severability.

The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

37.4 Governing Law.

This Agreement shall be governed by the Laws of the State of Maryland and as applicable, the Laws of the United States of America.

37.5 Survival.

In order that the Parties may fully exercise their rights and perform their obligations hereunder arising from the performance of the Work under this Agreement, any provisions of this Agreement that are required to ensure such exercise or performance shall survive the termination or expiration of this Agreement.

37.6 Entire Agreement.

This Agreement, as executed by authorized representatives of the County and Contractor, and all amendments and modifications thereto issued by the County, as each relates to the Work and all of which are incorporated herein by reference, constitute the entire agreement between the Parties with respect to the matters dealt with herein, and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein. Any representations, warranties, statements or inferences therefrom by either Party or its representatives, whether made orally or in writing, prior to the date of this Agreement shall have no legal effect and shall not be binding on either Party unless incorporated herein or in documents or agreements mutually agreeable to the Parties provided after the date of this Agreement. Notwithstanding the foregoing merger clause, representations and warranties made by the Contractor in the RFP (defined below) hereby are incorporated by reference into this Agreement and survive as if fully written herein.

37.7 Modifications.

No oral or written modification of this Agreement by any official, officer, agent or employee of Contractor or the County, either before or after execution of this Agreement, shall be of any force or effect unless such modification is in writing and is signed by the Party to be bound thereby.

37.8 Waiver.

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding.

37.9 Records.

Contractor shall retain and maintain all records and documents relating to this Agreement for four (4) years after termination or expiration of this Agreement and shall make such records and documents available for inspection and audit by authorized representatives of the County at all reasonable times.

37.10 Liquidated Damages and Liability.

37.10.1 Contractor agrees that if Contractor challenges the validity of such liquidated damages as penalties or fines as being otherwise unenforceable, and such delay liquidated damages or the Buydown Amount are so held to be unenforceable, the County shall be entitled to recover all actual damages incurred by the County and that such actual damages shall not be limited by any term contained in this **Section 37.10.1** or by the limitation of liability set forth in **Section 37.10.2**. The County and Contractor agree that each is estopped to argue the invalidity or otherwise question the reasonableness of

the delay liquidated damages or Buydown Amount provisions, as each represents the allocation of risk between the Parties and the basis of the bargain.

37.10.2 Subject to **Section 37.10.1**, in no event shall the delay liquidated damages or Buydown Amount payable by Contractor to the County pursuant to **Article 14** exceed thirty percent (30%) of the Fixed Construction Price. The foregoing limit shall not include items for which Contractor is obligated to indemnify a party hereunder and shall not include any sub-limits or damages unrelated to delay claims or affected by the Buydown Amount. Nothing in this **Section 37.10.2** shall relieve a Party of its obligation to comply with its performance obligations hereunder or of its related liability for the non-performance, nor shall any insurer or surety be relieved of any obligation under this Section 37.10.2, it being the intent of the Parties that this **Section 37.10.2** may only limit the amount of aggregate liquidated damages payable by Contractor as specifically provided in this **Section 37.10.2**.

37.10.3 In no event shall the County's aggregate total liability for all monetary damage payments to Contractor arising out of this Agreement (other than the County's obligation to pay the Fixed Construction Price pursuant to **Article 7**) exceed thirty percent (30%) of the Fixed Construction Price.

37.11 Priority of Documents.

In the event of a conflict in the provisions of this Agreement, the following priority of documents shall control the resolution of such conflict:

1. The provisions of this Agreement ,excluding the Exhibits to this Agreement, except for Exhibit P, which is the "Subrecipient or Subcontractor Flowdown Requirements" of the Energy Efficiency and Conservation Block Grant Program;
2. **Exhibit A** – Scope of Work and Specifications;
3. **Exhibit G** – Performance Guarantees;
4. **Exhibit M** – Detailed Plans;
5. **Exhibit D** – Performance Test Procedures;
6. Other Exhibits to this Agreement;
7. Specifications and other materials approved by or on behalf of the County during prosecution of the Work; provided, however, that the general rule that specifics prevail over generalities shall remain in effect in interpreting this Agreement; and
8. The Proposals for Alpha Ridge Landfill Waste Heat Recovery System in Howard County, Maryland opening date January 5, 2011 and all addenda thereto (collectively the "RFP") issued by the County, each of which are hereby incorporated by reference and made a part hereof.

37.12 Cooperation.

Each Party shall take such further actions, execute such documents and furnish such information as may be reasonably requested by the other Party, and shall reasonably cooperate with the other Party in order to carry out the purposes and intent of this Agreement and in order to enable them to perform their respective obligations hereunder. Such activity or cooperation shall be provided by each Party at no additional cost to the other Party, unless otherwise provided herein. Contractor agrees to cooperate with

the County in connection with any documents, agreements or amendments or additions to this Agreement reasonably required by the County.

37.13 Rules of Interpretation.

The following rules shall apply in interpreting this Agreement unless otherwise expressly provided herein or the context otherwise requires:

37.13.1 All reference in this Agreement to designated “Articles”, “Sections”, “Exhibits” and other subdivisions are to the designated Articles, Sections, Exhibits and other subdivisions of this Agreement.

37.13.2 Words of the masculine gender include correlative words of the feminine and neuter genders and words expressed in the singular shall include the plural and the plural and singular.

37.13.3 The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.

37.13.4 References to agreements or contracts include all amendments, modifications and supplements thereto.

37.13.5 All terms and phrases used in this Agreement shall be interpreted in accordance with common usage and meaning in the United States. All documents, warranties, Notices, instructions and other written materials to be provided to the Parties hereunder shall be provided in English.

37.13.6 Unless otherwise provided for in this Agreement, wherever the County’s consent or approval is required such consent or approval may be withheld in the sole and absolute subjective discretion of the County.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed under seal as of the day and year first above written.

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____(SEAL)
Ken Ulman
County Executive

APPROVED: DEPARTMENT OF
PUBLIC WORKS

James M. Irvin, Director

APPROVED FOR SUFFICIENCY
OF FUNDS:

Sharon Greisz, Director
Department of Finance

APPROVED as to Form and Legal Sufficiency
this _____ day of _____, 2010

Margaret Ann Nolan
County Solicitor

[SIGNATURES CONTINUE ON NEXT PAGE.]

WITNESS/ATTEST:

CONTRACTOR:

By: _____ By: _____ (SEAL)
Title: _____ Title: _____
[CORPORATE SEAL]

Engineer License No. or Certificate No. _____
(Where applicable)

State: _____

Contractor License No. _____
(Where applicable)

State: _____